

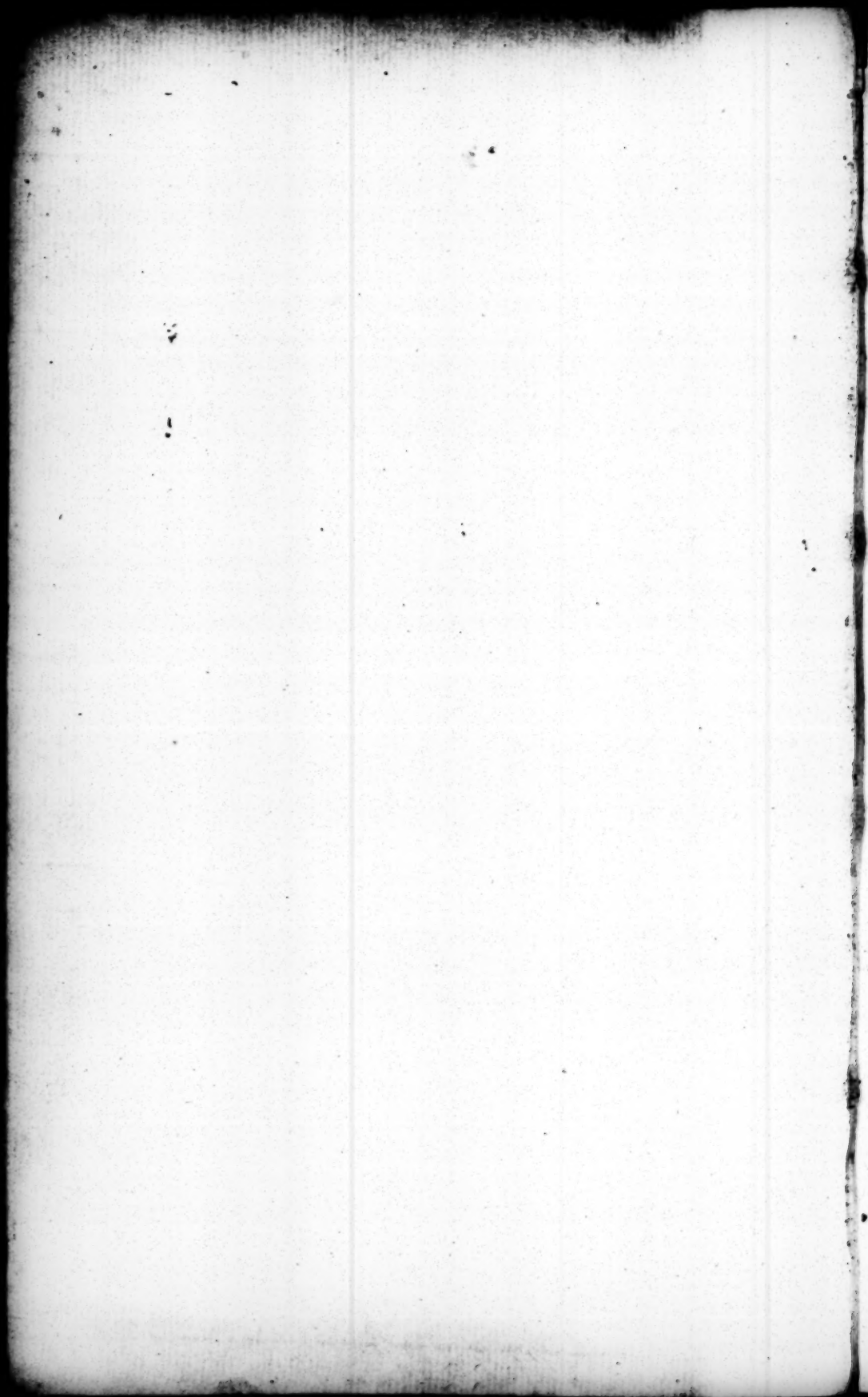
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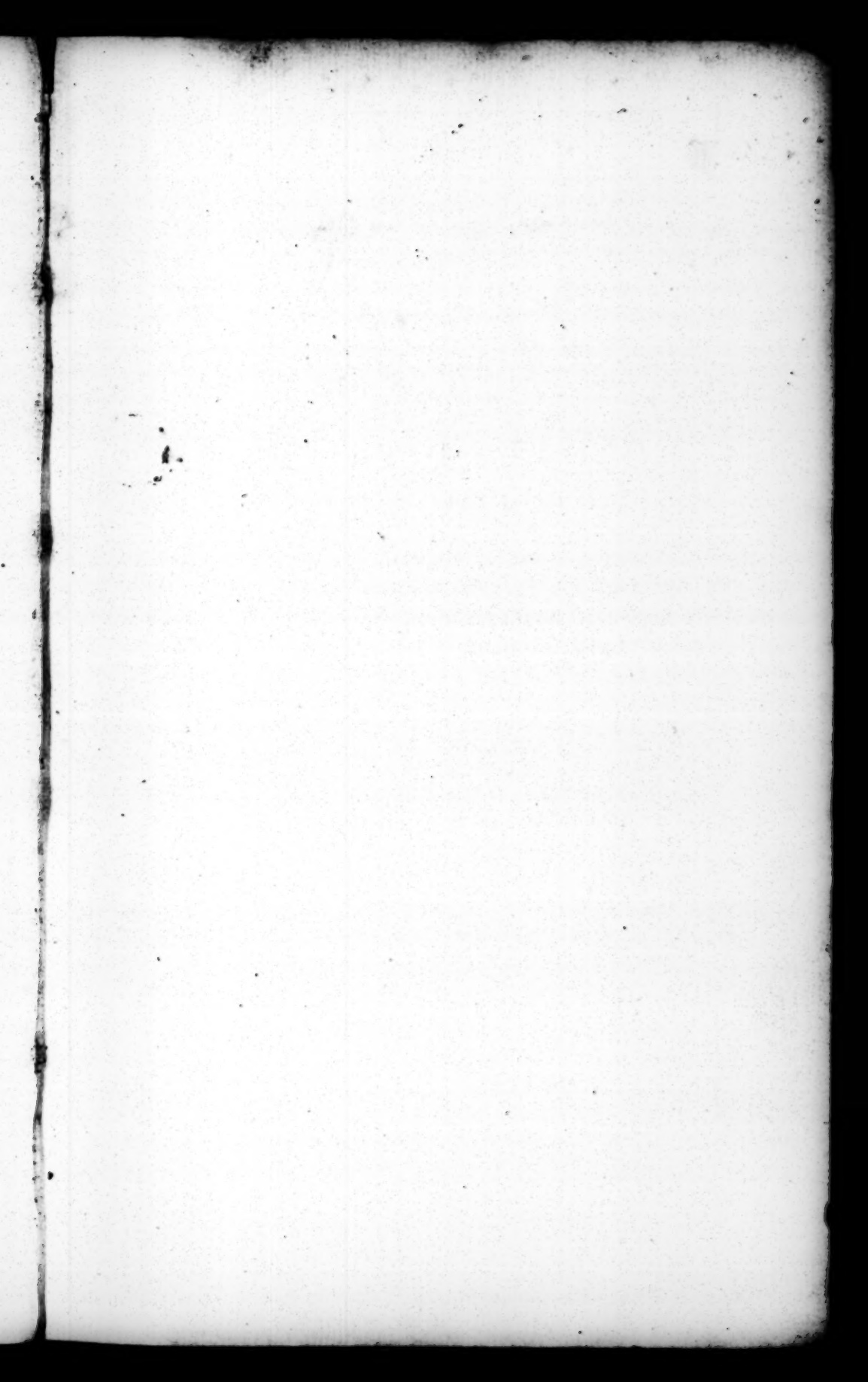


L4:4









THE
Parson's Counsellor,
WITH THE
L A W
O F
TYTHES or TYTHING.
In Two BOOKS.

The first sheweth the Order every Parson, Vicar, &c. ought to observe in obtaining a *Spiritual Preferment*, and what *Duties* are incumbent upon him after the taking the same, and many other things necessary for every CLERGY-MAN to know and observe.

The second shews, in what manner all Sorts of *Tythes, Offerings, Mortuaries*, and other *Church Duties* are to be paid, as well in LONDON as elsewhere, and as well by the *Canon* as *Common* and *Statute-Laws*, and in what Courts and manner they may be recovered, what *Charges* they are subject to, and many other things concerning the same, necessary for CLERGY-MEN and all others to know.

The Fourth Edition Corrected, and enlarged in many particulars through the whole Book, with a Table: &c.

Written by Sir SIMON DEGGE Kt.

L O N D O N,
Printed by the Assigns of Richard and Edward Atkins Esquires,
for Henry Twyford, and are to be sold by Dan. Browne without
Temple Barr, Will. Rogers and Tim. Goodwin in Fleetstreet. 1685.

Patrons' Contributions

Wm. W. W.

Wm. W. W.

Wm. W. W.

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Wm. W. W.

Wm. W. W.

Wm. W. W.

TO THE
RIGHT HONOURABLE
AND
RIGHT REVEREND
FATHER in GOD,
THOMAS
Lord Bishop of
Lichfield and Coventry.

My Lord,

 *Thought to have sent
this Trifle into the
World without Pa-
tron or Authors Name to it ;
but 'tis well known, how scan-
A 2 dalous*

The Epistle

dalous it is to that Child whose Parent is ashamed to own it ; I therefore resolved to run the Censure of a Critical World: And then observing how ancient Dedications have been both by Greek and Latin Authors, and that they are continued to this day throughout all Christendom, I resolved not to be singular: And considering that this little Undertaking was performed at the Request of some Reverend Clergy-men of your Lordships Diocess, and that it was nursed up to what it is now presented to your Lordship there likewise, I conceived it could not challenge the
Pa-

Dedicatory.

Patronage of any other more properly than of your Lordship; and therefore such as it is, I here humbly present it to your Lordship. My Lord, at first I designed no more but the Second Part of what it now is : but observing your Lordships diligent and great care at your Lordships Primary Visitation at Derby against Symony, Dilapidations and Nonresidence, the three great Pests in the Church, I added three Chapters upon those Subjects; and after adding one thing after another, it came to make a distinct Part of this Work alone. My Lord, Your Lord-

A 3 ship

The Epistle

ship has had many Honourable and worthy Predecessors, and I cannot forbear to mention to your Lordship your immediate Predecessor, my Lord Bishop Hacket, with what indefatigable Industry did he repair, or rather re-edifie the Church at Lichfield, which he happily lived to finish? A Work could hardly have been performed by any other. How circumspectly, prudently and diligently did he govern his Church, never absenting himself, unless in his Majestie's and Countrey's Service? How constantly did he visit and preach through his Diocese?

A

Dedictory.

A Religious Pattern for all his Clergy. What great Insight had he both in the Civil, Canon and Common Laws, that related to the Church Government? How oft did he sit in his Consistory to see Justice done? Nay, what did he neglect, that became a worthy Prelate to do? And for his deep and profound Learning in his Function, certainly few exceeded him, if I have any Judgment. My Lord, I have observed three things perpetuate mens Memory to Posterity, Children, learned Writings, and publick and eminent Buildings, he was
A 4 *for.*

The Epistle

fortunate in them all ; He has left a worthy Son to inherit his Name , Virtue, and Temporal Estate ; He has left many learned Works for the benefit of Posterity , whereof some are already made publick ; and he has made himself no less eminent by his publick Buildings , witness his Cathedral Church at Lichfield , and Trinity Colledge in Cambridge , where he had his Education ; besides many other Works of Piety and Charity in those few years he was Bishop. My Lord, God hath not yet blest you with Children , but may in good time, to preserve your
Name

Dedicatory.

Name: And I have heard your Lordship intends some eminent Works for the Publick; and that your Lordship hath resolved to go on, where your Predecessor left, in Building a Palace for your self and Successors; I have great reason to believe, having heard your Lordship so often declare you would do it; and having laid your Hand to the Plow in preparing some Materials towards it, I know you will not look back: I have heard your Lordship declare how much you delight in Hospitality, which can never be so splendid as in a Palace of Tit. 1. 8. your own Building: And hereby

The Epistle, &c.

*by your Lordship will make
your self as eminent in the
next Age, as your worthy
Predecessor is in the present,
than which nothing can be
greater satisfaction to all, but
chiefly to,*

My Honoured good Lord,

Your Lordships most duti-

ful Son, and most

obedient Servant,

S. Degge,

To

To the Parsons, Vicars,
and the rest of the Re-
verend Clergy of the
Church of *England*.

Your kind acceptance of the former Impressions of this Book, has encouraged me again to appear in Publick. The first was hurried to the Press so hastily, that I had not time seriously to peruse it, whereby some things were slipt in the Copy; and my being far from the Press, occasioned many mistakes by the Printer. In this and the latter, something more care has been taken. The only essential oversight in the first Impression (which I have yet discovered) was in the sixth Chapter of the first Book, which I
must

must still desire may be corrected by this. I added many things to the second and third Edition, with three whole Chapters ; and some things to this. Your continued kind acceptance makes me think my labour well bestowed.

Et sic Valete.

S. D.

TO

T O T H E
Courteous Reader.

IT is observed in the second Part of Sir *Edward Coke's* Reports, in the Bishop of *Winchesters* Case, that there were two great Persecutions of the Christian Religion, the one under *Dioclesian*, the other under *Julian* the Apostate: The first by murdering the Priests, that by their preaching advanced the Christian Religion: The latter, by spoiling the Church of its Revenues. The former contrary to expectation advanced, and not suppressed Religion: For it has proved in all Ages, that
sanguis

To the Reader.

Sanguis Martyrum est semen Ecclesiæ; for the patient suffering of so many Martyrs of the Primitive Christians gave the World a sufficient Testimony, that those poor Christians had some extraordinary Divine Assistance to undergo with patience so much Cruelty, that no others durst put themselves unto the trial of. But the taking away the Revenues of the Church, Martyred the Priesthood it self, and struck at the Foundation: For when People saw there was nothing left but Persecutions, no Sustenance for those that Ministred at the Altar, it discouraged them to breed their Children up to a study that advanced them to nothing but danger; which introduced great ignorance of the true Knowledge of God and Religion: So that as one killed the Priests, the
other

To the Reader.

other destroyed the very Priest-
hood it self. And though the
Apostle St. *Paul* got his Living ^{2 Cor. 11. 9.}
by his labour, that he might
not become burthensome to his
Profelytes; yet the same Apo-
stle tells us, That *the Labourer is* <sup>2 Cor. 11. 12,
14, 16.</sup>
worthy of his hire, and that by
the Law of *Moses*, *The Ox was* <sup>Matth. 10. 10.
1 Tim. 5. 18.</sup>
*not to be muzzled that treads forth
the Corn*: And by way of Expo-
stulation in another place, says,
Who goes on warfare at his own ^{2 Cor. 9. 7, 9, 10}
*Charge? who plants a Vineyard and
eats not of the Fruit thereof? and
who feeds a Flock, and eats not of
the Milk thereof? for he that
ploweth should plow in hope, and
he that thresheth should be parta-
ker of his hope.* And again says
he, *Is it a great thing, that those
that sow to you spiritual things,
should reap carnal?* And do you
not know (says the same Apo-
stle) *that they that Minister about
holy*

To the Reader.

holy things, live of the things of the Temple? And that they that wait at the Altar, are partakers with the the Altar? For so hath the Lord ordained, That they that preach the Gospel, should live of the Gospel. What effect this Doctrine wrought amongst the Primitive Christians, you may read in the fourth Chapter of the Acts of the Apostles, where it is said, That as many as were possessors of Houses or Lands sold them, and brought the prices of things that were sold, and laid them down at the Apostles feet; and distribution was made to every man according as he had need. But the Christians of this present Age are so far from selling their Houses and Lands, and laying the price at the Apostles feet, that they will rather detain that from the Clergy, which by Law and Right is due to them. But certainly, had the sincerity

To the Reader.

sincerity of the Primitive Christians continued, I should never have needed to have set Pen to Paper upon this Subject I am now about, which is the *Law of Tythes or Tything*: A duty established by the Laws of this, as of other Nations, for the maintenance of the Secular Clergy, and for their sake it is that I have undertaken this Work. There was a Tything Table published many years ago by a Bachelor of Laws, wherein he has learnedly set forth the manner of Tything by the Canon and Ecclesiastical Laws: But those Laws and the Common Laws of this Realm differing in many things, wherein the Common Law is to be preferred; that Tithing Table has often led both Parson and Parishioners into many Errors: besides the several discharges from payment of Tithes, either
a absolutely,

To the Reader.

absolutely, or *sub modo*, of divers Lands in *England*, by the Statutes or Common Laws, makes great alteration here from the Canon Laws. To rectifie which, and as near as may be, to reconcile the Canon and Common Laws, I did by the perswasion of some Reverend Divines, first make some Animadversions upon that Tything Table: But when I had done that, considering there were many more things in relation to Tything, that I could not conveniently apply to the Text, concerning Prescriptions, Customs, Compositions, and other Priviledges, besides the Laws concerning Offerings, Mortuaries, and other Church Duties, fit for all men to know, as well Lay as Clergy, I adventured upon this larger Work. Which I the rather did, because I do not find any
other

To the Reader.

other that hath published any compleat Work in this kind, or to reconcile the Common and Canon Laws, that kind of learning lying dispersed in our Law Books; I have therefore in favour of the Parsons and Vicars, taken up a former Resolution, and adventured to expose my self to the publick censure. And though I cannot promise any perfection in this Work; yet I dare presume to say it is the most perfect Work of this nature yet extant; though I can pretend to nothing of it but the errors and mistakes, which I will be thankful to any body that will friendly correct, that I may make it more exact in a future Edition, if I have encouragement. The hindrance of conversing with the Learned, by reason of my confinement to the Country, and not having access to any publick Libraries,

a 2 hath

To the Reader.

hath hindred me of some helps I might have had thereby. Perhaps it may not be so acceptable to those in whose favour I have writ it, because it comes from the Pen of one who professes himself a common Lawyer: But in my Judgment, in this Nation, wherein the common Laws and Customs of the Country prevail against the Canon and Ecclesiastical Laws; this Subject is not altogether improper, if not most proper for a common Lawyer. And truly I have through this Discourse dealt with as impartial an hand as the matter would admit. And though the Clergy may think it to their prejudice, that I have at large set forth the several discharges by which Lands are freed from the payment of Tythes: Yet in that I have given them a clear light, which Lands cannot be so privileged,

To the Reader.

ledged, and what Prescriptions and *modus decimandi* is not good, being well assured that there are more Lands at this day escape payment of Tythes upon pretence of some priviledge, to which they have no right, than those that pay Tythes, and might legally be discharged. But when I have done my best endeavour to serve the Reverend Clergy, I cannot give them Incouragement to depend upon their own Judgments, grounded upon any thing here writ; for tho' this may suffice to give them some light, what shall be due to them, yet I cannot hope by any thing I can write to make them Lawyers; for many *Quære's* will arise, that no foresight of mine could give an Answer to: But this Benefit I hope they will receive by my Labours, that they may put

To the Reader.

their case, and make their doubts known more pertinently to the Learned. I had no sooner finished this little Tract concerning Tythes, but I considered there were many other things almost as useful for a Clergy man to know, as the Law of Tythes: And though Mr. *Hughes* of *Grays-Inn* many years since, published a learned Tract which he intituled the *Parsons Law*; yet there are many more things necessary for a Clergy man to know, that are there only briefly, or not at all touched upon; and of such force, that they must either be performed and observed to make a man a compleat Parson, or to make him none, though never so exactly instituted and inducted, if omitted. I have therefore in the first place, before I come to the Law of Tythes, shewed, what

To the Reader.

what Simony is, and what danger those run themselves into, that are guilty of it; what things every Parson, Vicar, &c. is to do before, at, and after his Institution and Induction, to make him a compleat Parson, &c. what Dilapidations are, and how punishable; what Priviledges the Clergy have at this day by the Laws of *England*; what charges and payments their Tythe and Church Livings are subject unto; what Causes of Deprivation have been allowed of by the Laws of *England*; what Leases they may take or set, and what Statutes they may fall in danger of; and of Pluralities, and who is qualified to have them, and in what manner to be accepted; Nonresidence, and many other things necessary for every Clergy man to know. I have divided the

To the Reader.

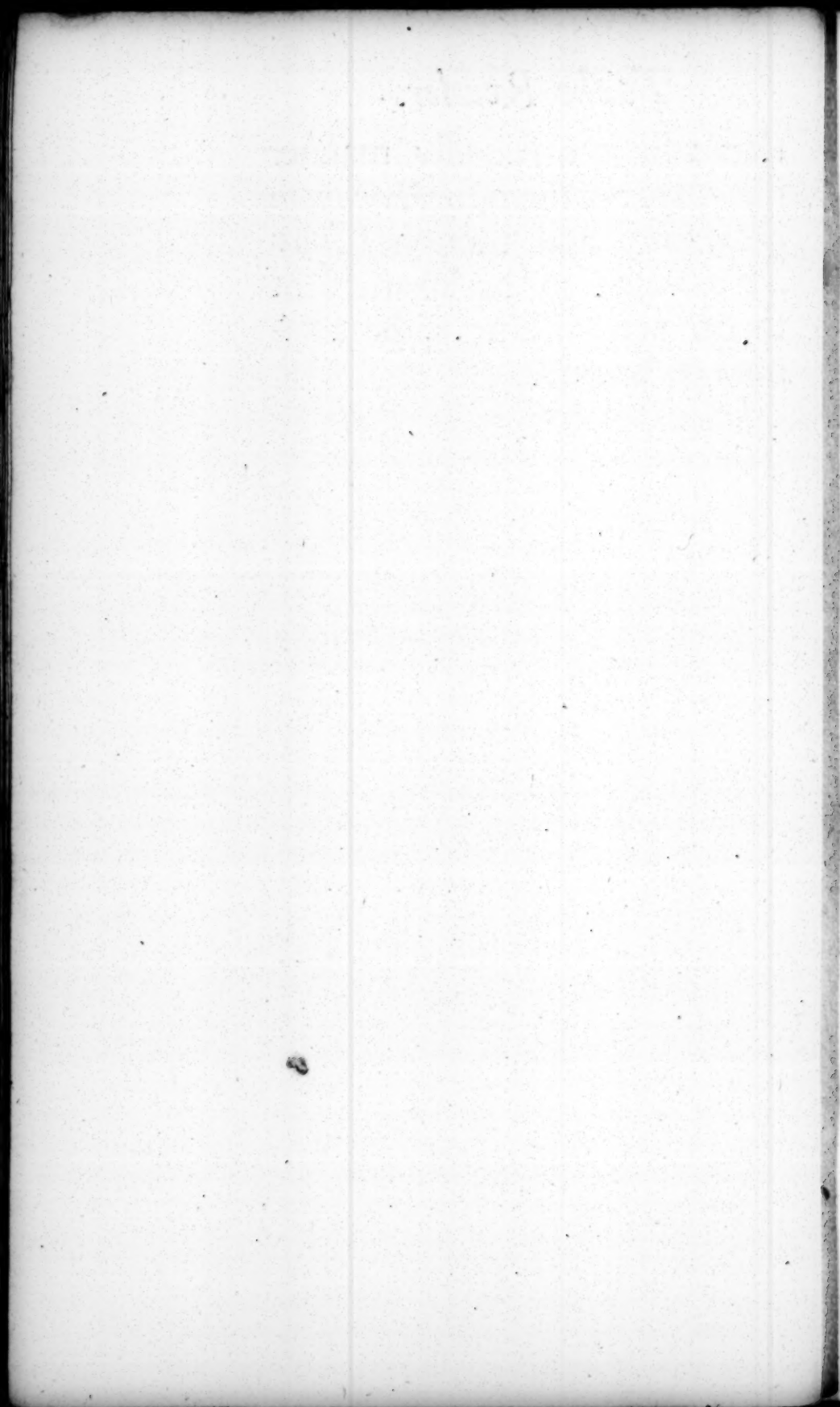
whole into Two Books , and them again into several Chapters and Paragraphs, and added a short Table for the more ready finding of any thing in either. I have likewise added a List or Catalogue of all the Abbeyes and Priories that were valued in the Kings Books at 200 *l. per An.* or upwards , and which were dissolved by the Statute of 31 *H.* 8. the Lands of which can only pretend to any priviledge to be discharged of the payment of Tythes; in which I have rather chosen to write after Mr. *Dugdale*, being a surer Author then Mr. *Speed*, in whom I have observed many Mistakes. I must beg the Readers patience to correct the Mistakes of the *Printer* (which are too many , by reason of my absence from the Press :) And for my own, I shall take it kindly from any body; that

To the Reader.

that will in a friendly manner inform me of them; for *Humanum est errare*; and though I may have cause to be ashamed of them, yet I will never be ashamed to amend.

Vale

THE



The Contents of the several Chapters contained in the first part of this Book, Intituled the *Parsons Counsellor*.

CHAP. 1. *sheweth, who may, or may not be a Parson, Vicar, &c.* Who may be a Parson.

Chap. 2. *sheweth, how one that is a person fitly qualified to be a Parson, Vicar, &c. ought to proceed in the obtaining and accepting of a Benefice.* How he must proceed in taking a Living.

Chap. 3. *shews, in what cases 'tis necessary for Jure Patrona- the Bishop to have a Jure Patronatus, and how to proceed in the same, and what is the force and effect thereof.* *titus.*

Chap. 4. *shews, how the Law stood concerning Pluralities before the Statute of 21 H. 8. who are qualified within that Law to have Pluralities, and how they ought to behave themselves in taking the second Livings, so that the first may not be made void.* Pluralities.

Chap. 5. *shews, what Symony is, and who shall be said to be guilty of it, and what are the dangers ensuing thereupon.* Symony.

Chap. 6. *shews, what one is to do before and at Institution, and after Induction, to make himself a compleat Parson.* What he is to do, at, before, and after Institution and Induction.

Chap. 7. *shews, what is required further of Parsons, &c. after Induction, and what Non-residence is, and the dangers incurred thereby, and what matters will excuse the same.* Non residence.

Chap.

The Contents.

- Dilapidations.** Chap. 8. *shews, what shall be said to be Dilapidations, and how the same are remedied and punished.*
- Deprivation.** Chap. 9. *shews, for what cause a Parson, Vicar, &c. may be deprived, according to the Rules of the Common Laws.*
- Leases.** Chap. 10. *shews, what Leases, a Parson, Vicar, &c. may make of his Glebe and Tythes, and what Farms he may, or may not take, and within the danger of what other Statutes they may fall.*
- Farms.**
- Priviledges of the Clergy.** Chap. 11. *shews, what Priviledges are allowed to the Clergy in Holy Orders by the Statute and Common Laws of this Realm, and what are pretended to by the Ecclesiastical Laws.*
- Chap. 12. *shews, how the Law stands concerning Churches, Chappels, and Church-yards, in whom the Freehold is, and how the Churches and Chappels are to be repaired, and concerning the Seats, Burials, Tombs, Coats of Arms, and other Ensigns of Honour in memory of the dead; and of the Church-Ornaments, and at whose charge to be provided; and what remedy for trespasses in the Church, Church-yard, or in breaking up of Tombs, taking, carrying away or imbezelling any of the Goods, or Ornaments of the Church, &c.*
- Chap. 13. *Treats of Parsonages, Vicarages, Sine Cura's, and Donatives, and of the Endowments of Vicarages, and how, and in what Cases a Parsonage and the Vicarage are to be reunited, and many other things relating to Parsonages, Vicarages, Donatives, and Sine Cura's.*
- Chap. 14. *shews, what Resignations and Permutations are, in what manner they may be made, and other matters relating to them.*

The

The Contents of the several Chapters contained in the second part of this Book, Intituled, *The Law of Tythes or Tything.*

- C H A P. 1.** *shews, what Tythes are, the several sorts and kinds thereof, and how the same become due.* *Quid, quotu-
plex, & quomo-
do debet.*
- Chap. 2.** *shews, by whom, and to whom Tythes ought to be paid.* *By whom, and
to whom due.*
- Chap. 3.** *shews, of what things Tythes are due to be paid, and in what manner the Tythes of Corn, Hay, &c. are to be paid.* *What things
are tythable,
Corn, Hay, &c.*
- Chap. 4.** *shews, where and in what cases the Tythes of wood ought to be paid.* *Wood.*
- Chap. 5.** *shews, where Tythes are due for Herbage or Agistment of Cattle, and who is to pay the same.* *Herbage.*
- Chap. 6.** *shews, where and in what manner the Tythes of Calves, Milk, Cheese, Wool, Lambs, Pigs, &c. are payable.* *Calves, Milk,
Cheese, Wool,
Lambs, Pigs,
&c.*
- Chap. 7.** *shews, in what manner the Tythes of Seeds, Fruit, Mast, Bees, &c. are to be paid.* *Seeds, Fruit,
Mast, Bees, Ho-
ney.*
- Chap. 8.** *shews, where and in what manner the Tythes of Pigeons, Conies, Fish, Deer, and other Birds and Beasts feræ naturæ, are tythable.* *Things feræ
naturæ.*
- Chap. 9.** *shews of what nature the Tythes of Mills. Mills are, and in what cases payable.*
- Chap. 10.** *treats of the Tythes of Hawking, Hunting, Fishing, Fowling, &c. and other personal Tythes.* *Personal
Tythes.*
- Chap.

The Contents.

Domestick Birds.	Chap. 11. <i>treats of the Tythes of Ducks, Geese, Swans, Turkeys, and other domestick Fowls and Birds.</i>
Of what things Tythes are not payable.	Chap. 12. <i>shews of what things Tythes are not due by the Common Laws of this Realm.</i>
Customs.	Chap. 13. <i>shews what force Customs have as well in the form and manner of Tything, as in the discharging the payment thereof, and the difference between Custom and Prescription.</i>
Interests in the Lands.	Chap. 14. <i>shews, what Priviledges the Parson, Vicar, &c. have in the Grounds where the Tythes arise, for the drying, making and carrying away the same.</i>
To what charge subject.	Chap. 15. <i>shews, to what charges the Glebe and Tythes are subject and liable.</i>
Modus decimandi.	Chap. 16. <i>shews, how far prescription will prevail in the manner of Tything, and in what cases a modus decimandi, will bind the Parson, &c.</i>
How to be destroyed.	Chap. 17. <i>shews, how a modus decimandi may be destroyed.</i>
How to be conveyed.	Chap. 18. <i>shews by what Conveyances, and by what names Tythes may be granted, demised, &c. and what Demises and Leases made by Parsons, Vicars, and other Ecclesiasticks, &c. are good.</i>
Of Leases.	
Barren Ground.	Chap. 19. <i>shews, what barren Lands are freed from payment of Tythes within the Statute of 2 E. 6.</i>
Real Compositions.	Chap. 20. <i>shews, what a Real composition is, and in what Cases Lands shall be freed from the payment of Tythes thereby.</i>
Monastery Lands.	Chap. 21. <i>shews what Monastery Lands are, or may be freed from the payment of Tythes.</i>
Personal Tythes.	Chap. 22. <i>shews what Personal Tythes are, and in what cases due and payable</i>

Chap:

The Contents.

- Chap.23. *shews, what Oblations, Offerings, &c. Oblations are, and where due and payable.*
- Chap.24. *shews, what Mortuaries are, and in Mortuaries what Cases they are due and payable.*
- Chap.25. *shews, how Tythes are to be paid in London. London, and several Resolutions upon the Statute, made for the payment thereof.*
- Chap.26. *shews in what Courts and in what manner Tythes may be sued for, and in what Cases Prohibitions lye for the staying of Suits for Tythes in the Ecclesiastical Courts, and how to proceed therein.*
-

*Directions in the Marginal
References.*

Note, That in my References to printed Books in this Treatise, I for the most part refer to the Page and part of the Page where the matter is to be found in this manner : If the matter be at the upper end of the Page I mark it with three Pricks thus ∴ if in the middle thus .. if at the lower part thus ∴ and where the Book is numbred by Fol. I add the *A.* or the *B.* side , as it happens.

THE

T H E

Parsons

COUNSELLOR.

CHAP. I.

*The first Chapter shews, Who may, or who
may not, be a Parson, Vicar, &c.*



AVING taken upon me to be the Parsons Counsellor, it is necessary in the first place, to shew who may be a Parson, Vicar, &c.

And by a Statute made in the 14 Car. 2. cap. 4. Fourteenth year of the Kings Majesty that now is, all are made incapable of being admitted to any Parsonage, or Vicarage; Benefice, or other Ecclesiastical Promotion, Preferment, or Dignity whatsoever, unless such person have Episcopal Ordination; and if any shall presume to be admitted, not having such Ordination, or shall presume to Administer the Sacrament of the Lords Supper, not being so Ordained, he is to forfeit an hundred pounds.

By divers ancient Canons of the Church, no man was to be a Deacon before he was twenty five years of age, nor a Priest before he should attain the Age of thirty years; but notwithstanding the

Concil. Arelat.
Can. 1. Concil.
Constant. cap.
14. & 15. Con-
cilium Neocæ-
sar. cap. 11.

Canons, they were frequently dispensed with, and made Priests younger.

St. 13 Eliz. c. 12

*By implication
this Statute al-
lows a man to
be made a Priest
at twenty four,
whereas by the
Canons he could
not be a Priest
before thirty
years of age.*

And by a Statute made in the thirteenth year of Queen *Elizabeth*, it is Enacted, That none shall be made Minister, or admitted to Preach or Administer the Sacraments, being under the Age of twenty four years; nor unless he first bring to the Bishop of that Diocese, from men known to the Bishop to be of sound Religion, a Testimonial both of his honest life, and of his professing the Doctrine expressed in the Thirty nine Articles; and unless he be able to answer and render to the Ordinary an accompt of his Faith in Latin, according to the said Articles, or have a special gift and ability to be a Preacher: Nor shall be admitted to the Order of Deacon or Ministry, unless he shall first subscribe to the said Articles.

And all Dispensations in this Case are made void by the same Statute.

So that upon the whole matter, none can be a Priest before he is four and twenty years of age, nor none can be a Parson before he is a Priest.

Can. Jac. 43. di-
stinct. 70. cap.
Nemine.

And by divers ancient Canons, and by Canons of our own, none ought to be ordained a Priest before he have a Title, that is, a Presentment to a Parsonage, Vicarage, or a Curacy.

Cap. Imprimis.

And by another Provincial Canon of our own, those that have been guilty of Homicide, or that have been Advocates *in causa Sanguinis*; those that are guilty of Symony, or makers or solicitors of Symoniacal Contracts, Witchcraft, burners of Churches, cannot be Priests without special Dispensation, nor by consequence Parsons or Vicars.

Cap. cum quan-
ta.

* Distinctio.

47 Co. 5. s. 1. a.

And by another Provincial Canon of our own, those that are guilty of Symony, Homicide, per-
sons Excommunicate, * Usurers, Sacrilegious per-
sons,

sons, Incendiaries, *vel* * *Falsarios*, may not be admitted into Holy Orders, and by consequence may not be Parsons, Vicars, &c.

* Perjury, For-
gery, dist. 50. fi
Episcopus.
38 E. 3. 2. a.

And by a Canon in the Council of Nice, a man that voluntarily castrated himself might not be a Priest; but if it were done by Enemies, or by the advice of Physicians for healths sake, it was no disability.

Bastards cannot be Priests without Dispensation nor by consequence Parsons.

Cap. eos qui de
non. Dyer 293.
5 H.7.20.a.
14 H.7.28.b.
15 H.7.7.b.
5 H.7.20.a.
Co.5.58.a.

A Villain cannot be a Parson, and if he be presented to a Living, the Bishop may refuse him.

A Miscreant that does not believe the Truth, an Infidel that does not believe at all, a Jew, Schismatick or Heretick that do not believe aright, ought not to be Parsons, and if Inducted ought to be deprived; and so if the party be irreligious or illiterate, so if the party presented be *mere laicus* or *utlawed*.

And the Bishop may refuse a Clerk *quia criminofus*, for any of the Crimes aforesaid, though the party be not convict, so the Bishop be certain of the truth thereof.

And all things that are just causes to deprive a Clerk, are just causes to refuse a Clerk when presented.

Co.5.58.a.

But it is no good cause to refuse a Clerk, because he is a player at unlawful Games, or a haunter of Taverns: Because these are not *malum in se*, but *malum prohibitum*.

Ibid.

And the Son cannot, without a Dispensation, be Parson of the same Church that his Father was Incumbent of the next before him:

Linwood. Cap.
Cum à jure in-
hibitum. Conc.
Lateran. Can.
31.

If a man cannot speak such Language as the Parishioners understand, he ought not to be admitted Parson of such a Parish, but may be refused by the Bishop: For to be illiterate, and not to be

Albany vers.
Evesque Lichf.
M.26 & 27 El.
C.B. rot. 2023.
Cro.Eliz.119.

Lucas verſ. E-
veſque Bath. P.
3 El. per Bend-
locs.

4 Inſt. 338.

1 Leonard. 130.

Dyer 293.b.

Mich. 168. 17

Eliz. per Harper.

underſtood, is all one to the Pariſhioners. And when the blind leads the blind, both fall into the Pit.

The Biſhop cannot reſuſe a Clerk becauſe he wants a Teſtimonial.

But it ſhould ſeem that if the Biſhop does admit and inſtitute any Perſon into a Living that lies under any of theſe Incapacities, the Church is full *de facto* till Sentence of Deprivation, Nullity or Declaratory, as the Caſe requires, and no Laſe incurs.

4 Inſt. 338.

Stat. 3 R. 2. c. 3.

7 R. 2. cap. 12.

5 R. 2. nu. 91.

6 R. 2. nu. 31.

10 R. 2. nu. 20.

1 H. 5. cap. 7.

Can. 23.

An Alien born at this day, I take it cannot be a Parſon, Vicar, &c. nor is capable of any Spiritual Preferment, without the Kings ſpecial Licence, and the Biſhop may deny to admit and inſtitute him, as Sir *Edward Coke* conceives.

By a Canon in the third Council of *Lateran*, under *Alexander* the third, it was decreed that none ſhould be Parſon of a Pariſh, under 25 years of age.

Vide *Leviticus*, cap. 21. v. 17, 18, 19, 20, & 21. what bodily blemiſhes diſabled Prieſthood under the Law.

CHAP. II.

The ſecond Chapter ſhews, how one that is fitly qualified to be a Parſon, ought to behave himſelf in obtaining a Living.

A Parſon ſo qualified as the Law requires, muſt without any corrupt or ſymoniackal Contract, obtain a Preſentation from the right and undoubted Patron of the Church, whereof he deſigns to be Parſon; which may be in this Form.

The Form of a
Preſentation.

*Reverendo in Chriſto Patri & Domino T. Di-
vina permiſſione L. & C. Episcopo, ejuſve Vicario
in*

in spiritualibus generali A. B. Armiger, indubitatus Patronus Ecclesiæ Parochialis de C. in Comitatu D. salutem in Domino sempiternam. Ad Ecclesiam de C. prædictam vestræ Diocesis, modo per mortem, (if void by the death of the last Incumbent;) but if it be by resignation, then you must say (modo per resignationem) but if the Church be void by the last Incumbent's being made Bishop, or by taking a second Living, not being qualified, then you may say (per cessionem) or as the special matter is, or if by Deprivation, then you must say (per deprivationem) and then proceed, E. F. ultimi incumbentis ibidem jam vacantem, & ad meam donationem pleno jure spectantem, dilectum mihi in Christo G. H. Clericum in Artibus Magistrum, paternitati vestra præsentem, humiliter supplicans, quatenus præfatum G. H. ad dictam Ecclesiam admittere, eumque Rectorem ejusdem Ecclesiæ instituere cum suis juribus & pertinentijs universis, cæteraque expedire & peragere, qua vestro in hac parte incumbunt officio pastoralis, dignemini cum favore. In cujus rei Testimonium his præsentibus sigillum meum apposui: Datum primo die M. anno regni domini nostri Caroli secundi Dei gratia, Angliæ, Scotiæ, Franciæ, & Hiberniæ, Regis, fidei defensoris, &c. vicesimo octavo, Anno que Domini 1675.

See other Forms
of Presentations
Regist. orig. 301

And note that the King, or any other Patron 1 Inst. 120.b. may Present by word of mouth, or by letter, and F. Qua. Imp. 60. it is as good and effectual as one in form.

As soon as a Clerk has obtained such Presentation, it behoves him with all convenient speed, and within six months after the Church became void by Death, Creation or Cession of the last Incumbent, of which avoidances the Patron is at his peril to take notice, or within six months after notice legally given to the Patron by the Ordinary

How to proceed
upon the Presentation.

22 H. 6. 29.b.
Doct. & Stud.
l. 2. c. 31.

Dyer 327. p. 7.
Rol. 2. 364. b. f.

Then if the Ordinary, &c. upon the examination of the Clerk, find him fit in all points, as above in the first Chapter is directed, then he admits him in these words, *Admitto te habilem*, &c. And thereupon the Ordinary institutes him in these words, *Instituto te Rectorem Ecclesie Parochialis de C. & habere curam animarum: & accipe curam tuam & meam*. And this the Bishop may do as well out of his Diocese as within it, for as to this matter, it is not local, but follows the person of the Bishop whithersoever he goes. When the Bishop has instituted the Clerk, the Ordinary, or, &c. makes a Mandate under Seal to the Archdeacon of the place *, or to such other Clergy men as he pleases, to induct the Clerk. And it may be made † by the Dean and Chapter, but not by the Patron: for though by the Institution the Church is full against all persons, save the King, yet he is not compleat Parson till Induction,

duction, for by the Institution he is admitted *ad officium* to pray and preach, yet he is not intitled *ad beneficium*, until he be formally inducted, which may be done by the delivering of the Ring of the Church door, or Latch of the Church Gate, or by delivery of a Clod or Turf, and Twig of the Glebe, but the most common and usual way is, and therefore the safest, by delivery of the Bell-rope to the new instituted Clerk, and he tolling the Bell: And the Archdeacon, if he do it, is to take but 40 *d.* for doing of it.

Lindsey versus
Dodson, M. 9
Jac. C.B.

33 H. 6. 24. 2.
Lindwood c.
Item quia Ar-
chidiaconi, &c.

And an Action of the Case will lye against the Archdeacon, if he refuse or neglect to do his duty, or the Clerk may compel him to do his duty in the Ecclesiastical Court; and note that the Church is full against every body but the King, by the Institution, but not against the King till Induction.

Hill. 45 Eliz.
C.B.
F.N.B. 74 H.
56. b.
26 H. 8. 3. per
Knightly.

Now note, that the six months, within which the Patron is to present, are to be accounted by 182 days, and not by 28 days to the month.

Yelvert. 100.
Co. 6. 61. b. 62. a
2 Inst. 361.

And note, that the Clerk is to do many things more at the time of his Institution, and after his Induction, to secure himself in his Living, which he will find in the sixth Chapter following, to which I refer him, and wherein very great care is to be taken, that all things be duly performed and observed.

What's to be
done after In-
duction.

There hath been some dispute, whether the six months shall commence from the time of the death of the last Incumbent, or other Avoidance, or from such time as the Patron could reasonably have notice, considering the distance of place; and more particularly, where the Patron or Incumbent should happen to be beyond the Seas at the time of the Avoidance.

From what time
the six months
shall commence.

And there hath been a Canon, *quod tempus* Roll. 2. 363. q.

semestre non incipit versus patronos, nisi à tempore scientia mortis personæ.

But by the Common Law of England, I conceive the Patron is bound to take notice of the Death, Creation or Cession, as aforesaid.

Regist. Orig. 42

What time the Patron is to present.

And this is proved by the Register, where in a Prohibition it's said, *Quia secundum legem & consuetudinem Regni nostri Angliæ Episcopi, &c. beneficia vacantia per lapsum temporis ante sex menses vacationum eorundem transactos conferre non debent, nec conferre consueverunt, aliquibus temporibus retroactis.* So that it appears by this Writ, that the time of the six months to collate by Lapse commences from the vacancy, and not from the notice: But this must be intended of such Avoidances, whereof the Patron is bound to take notice as aforesaid.

Kelw. 50. b.

34 H. 7. 21. a.

14 H. 7. 21. a.

Dyer 227. p. 7.

The Patron presents after

Lapse incur'd.

13 E. 4. 3. b.

11 H. 4. 80. a.

Hob. 154.

Hutton 24.

32 E. 3. 2.

11 H. 4. 80.

43 E. 3. 11.

Lindwood.

Si aliquo evincente, &c. verba injuria.

Dyer 277. p. 56.

Quere.

And it is also to be observed, that if the Patron do present his Clerk, which is refused by the Ordinary, because he is illiterate, criminous, &c. there the Patron shall have no longer time to present but six months from the time of the Avoidance, where the Patron is bound to take notice of it, and six months from the time of notice, where the Ordinary is bound to give notice of the Avoidance.

But note, that in all cases, if a Church Lapse to the Bishop or Archbishop, and the Patron present his Clerk before the Bishop or Archbishop have collated; the Bishop, &c. is bound to admit the Clerk of the true Patron, and cannot take advantage of the Lapse. But the Canonists as should seem, hold the contrary, but the Common Law in this, as in other things, is to be preferr'd.

But if the Bishop collate, and the Patron present before Induction, he comes too late.

But the great question is, if the Church Lapse

to the King, and the Patron presents before the King takes advantage of the Lapse, Whether this shall avoid the Kings Title by Lapse? it is made a *Quære* by Dyer: But *Hobert* seems to be clear in it, that the King shall not have the benefit of the Lapse; but divers * Authorities are against him, *Ideo quære*. *Rolls* 2.368.b. 27 E.3.84. b. Co. 7.28. *Doct. and Stud. lib. 2. cap. 31.*

Dyer 277.p.55.
Hob. 152.
Hut. 24.
* Cro. El. 119.
Cro. Jac. 216.
Owen 3 & 5.

There have been some Opinions amongst the Canonists, that a Lay-Patron should have but four months to present, but an Ecclesiastical person should have six months; and so it is said is the Law of Scotland; but the Common Law, which rules the point here, and with more reason, gives the Patrons in both Cases six months.

What time the Patron has to present.
Screne Regiam Majestatem
10. b.
Chap. *Quoniam verbum devolvatur.*

In the Cases of Deprivation and Resignation, where the Patron is to have notice before the Church can Lapse, the Patron is not bound to take notice from any Body but the Bishop himself, or other Ordinary; which must be given personally to the Patron, if he live in the same County; but if the Patron live in a Forreign County, then the notice may be published in the Parish Church, and affixed on the Church door: And such notice must express in certain the Cause of the Deprivation, &c. and it must be *verè, propriè, personalitèr, & non fictè*. By the Ecclesiastical Laws. There are several other ways that a Church may become void, of which the Patron is at his peril to take notice, as union, not payment of Tenths, &c.

Doct. and Stud. *ubi supra.*
Co. 6.19.b.
Cro. El. 119.
Dyer 328.a.
Dyer 346.a.
Co. 6.29.b.
Dyer 346. b.
Harp. 3 & 4 El.
Dyer 237.
P. 29. 255.p. 5.
St. 13 El. c. 12.

But no Lapse shall incur by any Deprivation *ipso facto* by the Statute of 13. Eliz. until six months after notice.

CHAP. III.

The Third Chapter shews, in what Case it is necessary that the Bishop have a Jure Patronatus, and how the same is to be proceeded in, and what is the effect and fruit of the same.

In what cases a Church shall be said litigious.

IF two Patrons present to one and the same Church by several Titles, the Church is become litigious; because the Bishop knows not which hath the very true and rightful Title to the same, and by consequence knows not which Clerk to admit: And I take it, the Church is not less litigious, though they both present the same person; because when the Bishop admits him as the Clerk of the one, he puts the other out of possession, and consequently to his Action; and the Bishop becomes a Disturber, if he who is put out of possession prove to have the better Title.

Where a Jure Patronatus is necessary, and how to be proceeded in.

† 34 H.6.38. b.

35 H.6.18.b. 19.a.

Now the Bishop in this case, to secure himself, ought to award a *Jure Patronatus* to inquire of the right; which is meerly an Inquest of Office in nature of a Writ *de proprietate probanda*, and does not at all † bind the Title or Right of the Party.

But it seems a question in our Books, Whether the Bishop is bound to sue the *Jure Patronatus* at his own cost and peril, or only at the Prayer, and at the cost of the Party that prays it, or of both parties? But the better Opinion seems to be, and so is the Practice, that the same is to be sued at the prayer, and at the cost of one of the parties that

that prays it, or of both the parties if they joyn.

Now whereas the Church may become litigious by double or plural Presentations, so it may become more litigious by the *Jure Patronatus*; for if two Patrons present, and each of them prays a *Jure patronatus* by himself (as they may) and the one Jury gives a verdict for the ones Title, and the other for the others Title, here the Bishop receives no direction at all, but the Church still remains litigious.

But here arises another great question, Whether the Bishop in this Case may let the Church Lapse, and collate? or whether he be not bound to admit one of the Clerks at his Election, or at his peril. Mr. Serjeant *Callis* in his Reading, was of Opinion, he might refuse both Clerks in this case, and suffer the Church to Lapse; and so is the Book in 21 H. 6. by *Newton* and *Paston*. *Tamen inde quare.*

And as a Church may become litigious by a *Jure Patronatus*; so it may become litigious after a *Jure Patronatus*, and a Verdict given for one of the Parties; for if a *Jure Patronatus* be awarded, and a Verdict given for one of the Parties, and before the Patron presents, for whom the Verdict was given, and prays admittance of his Clerk (as he ought to do, before the Bishop is bound to admit his Clerk) another presents; here the Church is become litigious *de novo*, and the Bishop in this case, as it seems, may award a new *Jure Patronatus* to determine the right of Patronage between the new and the old Patron, for whom the Title was found in the former.

But some have thought, that though the Church be not litigious by double or plural Presentations, yet the Bishop, if he doubt of the Patrons

34 H. 6. 11. 2.
Hob. 317.

34 H. 6. 38.
5 H. 7. 22. a. it
is made a *Quere*.

Callis Read. 3.
21 H. 6. 44. 2.
Quere.

41 H. 6. 45. 2.

21 H. 6. 44.
Callis Reading
29.
Hob. 318.

trons Title that presents, may award a *Jure Patronatus*, and inquire of such Patrons Title, and by that means prevent the surprize that may happen to other pretenders by sudden admission of the Clerk; and in case the right of Patronage be
 †₃₄ H.6.44.2. found for † a Stranger, the Bishop may admit his Clerk.

Hob.317..

But it seems, that if the Bishop admit the Clerk that is presented before the Church becomes litigious by a second Presentation, the Bishop acquits himself thereby from being a Disturber; but by this means the Bishop may do great wrong in surprising other Patrons that have right; And the Law doth not so hasten the Bishops proceeding, but that, as hath been said, he may take convenient time to examine the Clerk, that other pretenders may take notice of the vacancy.

Hob.317.

But though the Church, by any of the means abovesaid, be become litigious, yet I think there is no doubt, but that the Bishop may admit either Clerk without a *Jure Patronatus*, but then he doth it at a double peril; for if the Patron, whose Clerk he admits, have not a good Title, or having a good Title, do not make it out in a *Quare Impedit*, or other Action brought for the Church, the Bishop will be made a Disturber.

And the Bishop may thereby do great wrong to the true Patron, by putting him out of possession of his Church, and forcing him to an Action that may turn much to his charge and trouble, beside great damage to his Clerk, and oft to the loss of the Advowson; therefore Bishops ought in this case to be very tender to proceed according to Justice. But if the Patron fear any foul play from the Bishop, and be not resolved of his Clerk, he may enter a Caveat with the Bishop, not to admit the Clerk of any other; and though
 this

this do not so bind up the Bishop, that he cannot
 * admit the Clerk of another person, yet if the Bishop will presume to do it without a *Fure Patronatus*, he may be punished by his Superior. Rolls 2.361.
m.3.
* Contra Poph.
133.

But in case the Bishop delay to admit the true Patrons Clerk, he may sue a *Duplex Querela* out of the *Archies*, to command the Bishop to admit his Clerk; and then if the Bishop do not admit the Clerk within nine days, or the space assigned by the *Duplex Querela*, or return a legal cause why he does it not, the *Metropolitan* may admit the Clerk in the Ordinaries default. Seiomor.
Zouch versus
Evesque Peter-
borough & al.
T.38.Eliz. B. R.

If the Archbishop institute in the Bishops default, and the Bishop appeal after Induction, a Prohibition lies. Bendl.2.293.
M.10.

But the Bishop may return, if the truth be so, that the Church is litigious, and that he cannot admit the Clerk till the right be determined in a *Fure Patronatus*, which will excuse him.

But the surest and safest way in this case is, if the Bishop delay the true Patron, immediately to sue a *Quare impedit*, and thereupon a *Ne Admittas* to the Bishop; and then if the Bishop, after the receipt of such Writ, admit the Clerk of any other person without a Verdict in a *Fure Patronatus*, the true Patron may have a Writ called a *Quare Incumbravit* against the Bishop, and may therein recover the Presentment with damages. F.N.B. 37.f.
F.N.B.48.g.h.
Ibid.l. 21 E. 3.
3.a.

And it should seem this Writ lies, in case the Bishop admit the Clerk of the adverse Patron, notwithstanding he hath obtained a Verdict in a *Fure Patronatus*: but this must be intended, I conceive, where such Patron is Defendant in the *Quare Impedit*. F.N.B.48.h.

And note, That a Caveat entred in the life of Cr. Jacobi the former Incumbent, is of no force. 463.

And note, That by a Canon made in the time of

of King *James*, the Patron or Clerk cannot have a *Duplex Querela* till 28 days are expired from the time the Clerk was presented.

How far the
Bishop is bound
by a Verdict in
Jure Patrona-
tus.

34 H.6.11. b.
Hob. 318.

And it seems likewise, that the Bishop is not so bound by the Verdict in a *Jure Patronatus*, but that he may admit the contrary Clerk, if he see cause, or be satisfied he has the better Title; but this seems to be against Justice, and the true intent of the Law.

And Sir *Henry Hobart* was of Opinion, That an Action of the Case lies against the Bishop by the Patron that is so disturbed, if in a *Quare Impedit* he prove to have the better Title, and recover his damages by reason of the delay and trouble the Bishop hath thereby put the Patron to; but then the Bishop must not be made a Defendant in the *Quare Impedit*: But of this *Quære*.

Quære.

The manner of
proceeding in a
Jure Patronatus.

Now the manner and form of proceeding in a *Jure Patronatus* is thus: The Bishop issues forth a Commission under his Seal to his Chancellor, or some other persons, whom he pleases, that are expert in the Canon and Ecclesiastical Laws: in which Commission (since the Title of Patronages is determinable at the Common Law) it were not amiss to joyn some Common Lawyer of eminent Learning and Integrity; and these Commissioners are by him authorized to summon a *Jure Patronatus*, and to proceed to the determination thereof, and then the Commissioner or Commissioners so authorized issue out a Mandate to some Officer of their own to summon a Jury, which must be one half Clerks, and the other half Laymen; and if they refuse, being duly summoned, to appear, the Commissioners may proceed against the Clergy-men by Sequestration, and the Laymen by Ecclesiastical Censures to compel an Appearance.

22 H.6.29.b.

When

When a full Jury of Clergy-men and Laicks appear, which must be six of each at least, the Commissioners are to swear first a Clergy-man, and then a Lay-man, till twelve be sworn at least of the Jury: But the Commissioners may swear a greater number than twelve of the Jury, if they please, or see cause, so always that there be an equal number of Lay-men and Clergy-men sworn in the whole.

The Points inquirable by this Commission are *Callis Reading* five; 29.

1. *Si Ecclesia vacat, & quomodo vacavit?*

2. *Quis Patronus ultimo præsentavit?*

3. *Quis est verus & indubitatus Patronus?*

4. *Quis præsentare debet ad Ecclesiam nunc vacantem?* *Vide Lindwood per nostram*

5. *De Idonitate personæ præsentatæ.* *Provinciam*

But the Civilians vary in their Articles at pleasure. *verbo inquisitionem.*

But the main and chief points are the third and fourth, the last resting wholly in the Judgment of the Bishop.

After the Jury is sworn and charged, the Council and Advocates of both parties are to shew their respective Clients Titles, and produce their Evidences to prove the same. And after the Evidence is given on both sides, and Counsel fully heard, the Jury may give their Verdicts forthwith, or the Commissioners may give them time to consider of their Evidence, and may assign them another time and place for the giving their Verdict, as in other Inquests of Office; but I 21 H. 6. 45. a. like much better (to avoid being tampered with) that they give their Verdicts forthwith before they part, unless new Evidence be expected. 22 H. 6. 29. b.

The Effect of this Suit is no more but for the Bishops security, that he may avoid being a Disturber; *The effect of a Jure Patronatus.*

sturber ; for the Verdict of this Jury is a sufficient warrant for the Bishop to admit and institute his Clerk, for whose Title the Verdict is given , and the Bishop for so doing shall never be made a Disturber, though the other Patron against whom the Verdict is given , shall after recover in a *Quare Impedit* or other Action.

What's to be done if the Jury will not give a Verdict.

35 H.6.18.b. &c.

34 H.6.12.a.:
Callis Read.29.

What's to be done where Coparceners, Joint-tenants, or Tenants in Common present severally.

21 H.6.45.a.:
Per Ascue.

34 H.6.4c.
5 H.7.8.causa
16.q.7.confiderandum est.

11 H.4.58.

33 H.6.32.

1 Inst.186.b.:
Doct. & Stud.
115.b.

Kite versus Evesque Bristol,
P.7 Jac. C.8.

1 Inst.186.b.:

6 Ed.4.10.b.:

34 H.6.40.b.:
Ubi supra.;

But suppose the Jury will not agree of their Verdict, and the one half be for the one Patron , and the other half for the other Patron; or, that they refuse to give any Verdict at all ; or if they find a special Verdict, as I suppose they may ; the Bishop in all these Cases is left to proceed at his peril, as though no *Jure Patronatus* had issued at all ; or perhaps in this case he may discharge the Jury, and summon a new *Jure Patronatus*.

And it is to be observed, that after a Verdict found in a *Jure Patronatus* for the Patron , the Patron must again request the Bishop to admit his Clerk ; otherwise, if the Church Lapse after six months, the Bishop may collate.

But if two Coparceners present several Clerks by the same Title, this doth not make the Church litigious, but the Bishop is bound to admit the Clerk of the elder sister : But this is to be intended where the eldest Sister presents alone, and not joyntly with any other of the Coheirs.

But if two Joyntenants or Tenants in Common present several Clerks , that makes not the Church litigious ; for the Bishop may admit the Clerk of which he pleases : or if they do not agree and joyn in presenting a Clerk within the six months, the Bishop may collate.

And note, That the Bishop needs not to make Commissioners to enquire *De Jure Patronatus* ; but he may, if he pleases, do the same himself : and therefore, if his Commissioners neglect to do their

their duties, it shall not excuse him, because it was his folly to name such Commissioners. But the Opinion of the Civilians seems otherwise: for they say, that the party shall name the Commissioners; and if they neglect their duties, it shall be at the peradventure of the party that names them. And though they make a false return, or no return at all, it shall excuse the Bishop; and the party grieved is left to his Action against the Commissioners.

If the Commissioners neglect their duties.
22 H.6.30.a.

And, as has been said, the Verdict in a *Jure Patronatus* does not bind the adverse party's Title, though it may be some evidence for him whose Title is found to be the best.

Verdict does not bind.
21 H.6.45.a.
34 H.6.38.b.

If there be three Joyntenants of an Advowson, the Church whereof becomes void, it has been a question if two of the Joyntenants may present the third, *Dyer* 304. b. 14 H.8.2. *More* 4 p. 14. *Bendl.* 34.

22 E.4.66.
13 H.8.12.
35 H.6.62.

CHAP. IV.

Shews how the Law stood concerning Pluralities before the Statute of 21 H.8.cap.13. Who are qualified within that Law to have Pluralities; and how qualified persons ought to behave themselves in taking the second Livings, so that the former may not be void.

A Plurality is, where one and the same person obtains two or more Spiritual Preferments with Cure of Souls, or without: against

What a Plurality is.

Co. 4. 90. b. .
Co. Mag. Ch.
626. . Vide
the Records
there cited.

Hob. 149.
Concil. tom. 4.
221. cap. 29.
Concil. Lat. 4.
1215. ca. 29.
Concil. Lat. 3.
1180. ca. 13.
Canon against
Pluralities.
Co. 4. 79. a.
Clement. tit. 2.
cap. 3. gloss.
Beneficia quæ
requirunt resi-
dentiam sunt
incapabilia.

* Can. 5.

Note, Those Li-
vings are said
to be incomp. sti-
ble that have
cure of Souls, or
are forbid to be
held together by
some Canon.

Tom. 5. 368.
cap. 64.

The effect of
Plural.

Co. 4. 79. b. .

Clement. 1. 3. tit.

2. ca. 3.

Gratian. causa

21. q. 1. Mag.

gainst which there have been several Canons , and they have been always discountenanced at the Common Law , and several Complaints have been made against them in Parliament ; yet the Pope held them up by his Dispensations. How agreeable these Dispensations were to God's Service ; nay, how prejudicial they have been to the advance of the Christian Religion, and are, I leave others to judge ; it being no part of my Undertaking. And though I find a great Judge of this Nation defending of them, yet I find a Canon in the general Council of Lateran against them, in the Year 1215. in these words, *Statutum est quod , quicumque receperit aliquod beneficium habens curam animarum annexam, si prius tale beneficium obtinebat, eo sit jure ipso privatus , & si forte illud retinere contenderit, alio etiam spoliatur, Is quoque, ad quem prioris spectat donatio, illud post receptionem alterius conferat cui merito viderit conferendum.*

And by the same Council it is further decreed, that *Dispensationes autem ad plura * incompatibilia ultra duo, nisi qualificatis juxta formam juris communis non concedantur, nisi ex magna & urgente causa.*

And now let me tell you the fruits of Pluralities out of another Council, which is delivered in these words: *Res ipsa loquitur, plura beneficia, potissimum quibus cura animarum submissa est, non sine gravi Ecclesiarum damno ab uno obtineri ; cum unus in pluribus Ecclesiis rite officia persolvere, aut rebus earum necessarium curam impendere, nequeat.*

Yet notwithstanding the Canonists allow of Pluralities in six Cases: 1. When the Churches are

are so poor, that either by it self will not maintain a Minister. 2. In such cases as the Bishop dispenses with them. 3. Where there is a scarcity of Clerks. 4. Where the Clerk has one by Title, and the other by *Commendam*. 5. By Grant from the Pope. 6. Where two Churches are united, or depend the one upon another. Which *Hofstiens* renders thus :

*Ecclesias plures nullus de jure tenebit.
Dependens, tenuis, rarus, vel gratia Papæ.
Utilitas urgens, & commendatio justa.*

But, as I take it, the Council of *Lateran* reduces all these qualifications to the Pope's dispensation. The Canon is as follows :

Cum fuit in hoc Concilio prohibitum ut nullus diversas dignitates Ecclesiasticas, & plures Ecclesias Parochiales reciperet contra Sacrorum Canonum instituta. Hoc idem in personalibus decernimus observandum, addentes, ut in eadem Ecclesia nullus plures dignitates habere præsumat, aut personatus, etiamsi curam non habeant animarum. Circa sublimes tamen & literatas personas, quæ majoribus sunt beneficiis honorandæ (cum ratio postula-verit) per Sedem Apostolicam poterit dispensari, &c.

Conc. Lateran.
sub Alex. 4.
1180.

Can. 29.
Vide Decretals
Gregor. de Præ-
bendis, &c. Lib.
3. tit. 5. cap. ad
hæc.

And upon this Canon, *Goodman* ; Dean of *Dyer* 273. p. 153
Wells, was deprived of his Deanery, because he had accepted the Prebend of *Wiveliscome* in the same Church, in the time of E. 6. And note, These Presentments were not within the Statute of *Pluralities*, but are left as they were upon the Canon Law ; for the Statute only extends to Livings with cure of Souls.

I might enlarge much more upon this Sub-

Conc. Trident.
496.

ject; but it being collateral to what I design, this taste shall serve. And if any body desire further satisfaction upon this Subject, I commend him to the History of the Council of *Trent*; where he will find, that by the greater and better Opinion of that Council, Residence by him that hath a Preferment in the Church with cure of Souls is of Divine Right; and that therefore the Pope had no power to dispence with Non-residence, the consequence of which is, that it is against Divine Right for any to take more Benefices than one with cure of Souls, because the same person cannot be resident in two places at one and the same time, to discharge his duty; which requires a constant attendance.

More 119.

But as the Pope by stratagem made the endeavours of all the good men in that Council ineffectual, so by his frequent Dispensations to take Pluralities without number or measure. He made the Canons of the Church of no other effect than to increase his own Revenue by Dispensations.

Acceptance of a
second Living
makes the first
void.

And it should seem the Council of *Lateran* was received and approved (as to that point) in this Kingdom, and the Law was always taken, that he that had one Living with cure of Souls, and without dispensation accepted another with cure of Souls, made the first void: So that the Patron of the first Church might present a new Clerk, and needed not to stay till the former Clerk should be legally deprived. But in this case the Church doth not lapse till the end of six Months, to be accounted from the time the Patron hath legal notice of the vacancy from the Bishop; but after Induction, the Patron,

24 E.3.29.b.

25 E.3.49.a.

55.b.

11 H.4.60. a.
per Hill.

14 H.8.17.a.

tron, as it should seem, is bound to take notice at his peril: And as to all others but the Patron, the Church remained full till induction into the second Living; and so are all the Books that seem *prima facie* to differ, reconciled.

But the Parliament of *England*, that in all Ages made bold with his Holiness, and to restrain the exorbitances of the Pope and Court of *Rome*, as the Reader may see, if he pleases to satisfy himself by the several Acts of Parliament mentioned in the Margent against Provisions suing at *Rome*, impeaching Judgments given at the Common Law, Aliens being Beneficed within this Realm, priviledging religious Orders from payment of Tythes, and many other things; and I cannot forbear to observe to the Reader the boldness of the Parliament in the sixth year of *H. 4.* with his Holiness, where they restrain the giving of exorbitant and unjust Fees for the Investitures of Bishops. The Act begins thus: *Whereas there is a damnable custome in the Court of Rome to take more for the investiture of Bishops, &c.* Certainly these brave Parliamenteers never expected his Holiness's Indulgence or Pardon, this seeming a sin as high as that against the Holy Ghost, to charge their holy Father with a damnable custom in his Court, to use Extortion and Symony.

And the Council of *Lateran* dealt almost as plainly with his Holiness, speaking of *Simony*; that Council has it, *Ut nefaria Simonia labes & pestis non solum* * *a Romana Curia, sed etiam ab omni Christiana ditone, in perpetuum dejiciatur, constitutiones per antecessores nostros etiam in sacris Conciliis nostris Editas con-*

Co. 4. 95. b.
44 E. 3. 22. a.
9 E. 3. 22. a.
10 E. 3. 1.
14 H. 7. 28. b.
14 H. 8. 17. a.
F. N. B. 34. L.
15 E. 3. 9.
11 H. 4. 37.
Cro. Car. 357.
Several Acts to restrain the Pope.
27 E. 3. cap. 1.
3 R. 2. cap. 3.
7 R. 2. cap. 12.
2 H. 4. cap. 4.
38 E. 3. cap. 1.
16 R. 2. cap. 5.
6 H. 4. cap. 1.
25 E. 3. of Provisions; and
27 E. 3. cap. 1.
6 H. 4. cap. 1.

Can 8.

* Nota.

The Act against
Pluralities.

21 H.8.c.13.

Co 4. 79.b.

This is a confir-
mation of the

Canon, where
the Living is

above 8 l. per
annum, but does

not annul the
Canon Law in

other cases; so
that the effect of

this Law is,
that it takes a-

way Dispensati-
ons in this case,

but leaves the
smaller Li-

ving's, as they
were before.

*tra hujusmodi Simoniacos, innovamus: easque
inviolabiliter observari precipimus.* But to re-

turn. I say the Parliament, to prevent the
mischiefs of these Dispensations, made a Law
in the twenty first year of H. 8. That if any
Person or Persons, having (that is, being insti-
tuted) one Benefice with cure of Souls, being
of the yearly value of eight pounds or above,
shall accept and take any other with cure of
Souls, and be instituted and inducted into the
possession of the same, that then, immediately
after such possession had thereof, the first Bene-
fice should be void.

And that it should be lawful to every Pa-
tron having the Advowson thereof to present
another, and the Presentee to have the benefit
of the same, as though the Incumbent had died
or resigned, and that any licence, union, or o-
ther Dispensation contrary to that Act should
be void.

If this Act had gone no further, it had been
an excellent Law: But there are so many qua-
lifications in this Law that wholly defeat the
benefit of it, since the Nobility are grown so
numerous as they are at this day; so that the
grievance is now become as great as ever; if
not greater, and deserves a new and stricter
reformation; for almost all the greatest and
best Livings of the Kingdom are now held by
Pluralists, and served by mean Curates.

But now let me return to the Act, and ob-
serve:

That this Act has only provided a Remedy
where the first Living is of the yearly value of
Eight pounds or above, which must be under-
stood according to the valuation taken in the
twenty

Cro. 6. c. 4. s. 1.

P. 19. Jac. C.B.

Evesque Dur-

ham versus E-

vesque Peter-

borough.

twenty ninth year of King E. 1. till the twenty sixth of H. 8. and after that time, according to the valuation then returned into the Exchequer, and now made use of in the First-fruits Office. * But many former Opinions and Books have been, that the valuation ought to be according to the true value. *Ideo Quære.* This point was moved in *Shute and Higdens Case, Vaughan* 130. but was not settled, so it remains a *Quære* still. Vide *Vaughan, Shute* versus *Higden*.

Roy versus Evesque Br. & Handly T. 44 El.B.R. rot. 564. The Court was divided. * Dyer 237. p. 29. Cro. Eliz. 853. *Quære.* Bushy versus Smith. T. 40 Eliz. rot. 123. Noy 38.

But in case the first Living be under the yearly value of Eight pounds, or a *sine cura*, then the party may accept a second, as he might have done before this Act, with a Dispensation, which he needs not now to go to *Rome* for, although he be not qualified within this Law.

But I conceive, if an Incumbent of a Living under the value take a second Living without a Dispensation, that the first Living is void by the Canon Law, though it be not so by the Statute.

But by this Act there are several persons qualified to have and retain Pluralities; and those are of three sorts: 1. By Service, 2. by their Birth, and the 3. by Dignities. And first of those that are qualified by Service.

1. All the Kings Chaplains, (which are not of his Council) and of the Queen, Prince, Princess, and Brethren and Sisters, Uncles and Aunts of the King.

2. Eight Chaplains of every Archbishop.

3. Six Chaplains of every Duke.

4. Five Chaplains of every Marquess and Earl.

5. Six Chaplains of every Bishop.

C 4

6. Four

6. Four Chaplains of every Viscount.
7. Three Chaplains of the Lord Chancellor, and of every Knight of the Garter and Baron.
8. Two Chaplains of every Dutchesse, Marchioness, Countess and Baroness, being Widows.
9. Two Chaplains of the Treasurer and Controller of the King's House; the King's Secretary, the King's Almoner, Clerk of the Closet, and Master of the Rolls.
10. One Chaplain of the Chief Justice of the *King's Bench*, and Warden of the *Cinque Ports* for the time being

All these, in respect of their Services, may purchase Licence or Dispensations, and take, receive and keep two Parsonages or Benefices with cure of Souls, notwithstanding this Act.

But those of the King's Chaplains, that are sworn of the King's Council, may purchase Licence or Dispensations, and take, receive, and keep three Parsonages, or, &c. with cure of Souls.

*Qualification
by Birth.*

2. The second qualification is by Birth; that is, the Brothers and Sons of all Temporal Lords and of Knights, born in Wedlock, may purchase License or Dispensations, and take, receive and keep two Parsonages, &c. with cure of Souls; in which qualification it is to be observed, that no provision is made for Bastards, nor for the Sons of Bishops, Abbots, Priors, &c. And note, in this case the Sons and Brothers of Knights have greater privilege than the Sons and Brothers of Baronets.

*Qualification
by Dignity.*

3. The third qualification is of certain persons dignified in the Universities; and of that sort

fort are all Doctors and Bachelors of Divinity, Doctors and Bachelors of the Canon Laws, which shall be admitted to any of those degrees by any of the Universities of this Realm, and not by Grace only; all which may purchase Licenses or Dispensations, and take, receive, and keep two Parsonages, &c. with cure of Souls.

And in this Act there is a negative Proviso to this effect, That no person or persons to whom any number of Chaplains, or any Chaplain by the provisions aforesaid is limited, shall in any wise by colour of the same provisions, advance any Spiritual person or persons above the number to them appointed, to receive or keep any more Benefices with cure of Souls, than is above limited.

There is another Proviso, that the Chaplains so purchasing, taking, receiving and keeping Benefices with cure of Souls; as aforesaid, shall be bound to have and exhibit, where need shall be, Letters under the Sign and Seal of the King, or other their Lord or Master, testifying whose Chaplains they be, or else not to enjoy any Plurality of Benefices by being such Chaplains. Upon this Clause some question has been made, whether a Chaplain can be retained within the meaning of this Law by parol; and it seems he may, so that they have such Testimonial, when they pray their Dispensation; but the safest way is to have it in writing, and it must be under Hand and Seal.

Now having shewed what persons are qualified within this Statute, I will in the next place shew how the Clerk, that would have the benefit of his qualification within this Law, ought to proceed in the taking a second Living, so that

Proviso, that above the number shall not be advanced.

Proviso, that they must have Testimonials.

Roy versus
Saveacre T.
28 El. C.B. rot.
1130. Hughes
p.41.

Roy versus E-
vesque Lincoln.
& alios. T. 31
El. rot. 725. C.B.

that the first may not be void, which is in this manner :

*How to proceed
in the taking of
a second Living*

*It should seem
that the King
might dispence
with a Plura-
lity at Common
Law.*

11 H.4.60.b.

Stat.25 H.8.
cap.21.

*First Living
void by institu-
tion into the se-
cond.*

Co.4.79.b.
Hob.166.

The Parson that falls within any of the qualifications within this Law, which makes him capable of a Plurality, and having obtained a Presentation to a second Living, must carry his Testimonial or Retainer under the Hand and Seal of his Lord or Master, to the Master of the Faculties, who is to make out his Dispensation or Licence to accept the second Benefice; which being obtained, he must next have it confirmed under the great Seal of *England*: and after he hath thus obtained his Dispensation, and has it confirmed under the great Seal, then, and not before, he is to apply himself to the Bishop of the Diocese where the Living lies, for his admission and institution: But these things taking some time in the doing, I advise the Clerk immediately to enter a Caveat with the Bishop and his Vicar General, and carry his Presentation to the Bishop, and acquaint him with it, and with the reason of his delay, lest he should be surprized. Though by the Letter of the Act the first Living is not void until induction into the second Living; the words whereof are as follow (*If the party be instituted and inducted in possession of the second Living, that then the first shall be void.*) Yet to avoid the great inconvenience that otherwise would ensue, it has been held that the first Living is void upon the bare institution into the second Living, and so it should seem the Law was before the making of this Act, where the party had no Dispensation.

And it is to be observed upon this Law, that in case any Lord, or other Person, whose Chaplains

Chaplains are qualified within this Law to have two or more Livings incompatible, do retain his full number of Chaplains, and after one or more above his number; that in that case the Supernumerary Chaplains, that were retained after such Lord, or other Person, had retained his full number allowed by the Statute, are not qualified by this Law to have Pluralities of Livings, although the supernumerary Chaplains be preferred before the other that were first retained: But if a Chaplain qualified within this Law be legally inducted into a second Living with a dispensation as he ought, although his Master be attainted, degraded, or removed from his Office, yet he shall retain his Plurality during his life.

But if one be retained Chaplain to any Lord or other Person, whose Chaplains are qualified within this Law, and his Master dies, is attainted, degraded or displaced before his Chaplain be preferred to a second Living; or if such Lord or other Person discharge such a Chaplain, (as he may) in all these cases the Chaplain loses his qualification to have Plurality of Livings incompatible.

But if a Dutches, Marchioness, Countess or Baroness do retain a Chaplain, and after marries, this shall not take away the qualification of such a Chaplain, but that he may have Plurality of Livings * incompatible within this Law, as he might have done before.

And if such Dutches, &c. retains Chaplains, and after marries, and after becomes a Widow again; yet the first retainer stands good, and was not countermanded by the marriage or death of the Husband.

And

Which Chaplains shall be qualified, where above the number is retained.

More 561.

Co. 4. 90. a. 8c

118. a.

R. versus Evef-

que Glouc. &c

Saveacre. An-

derfon 200.

Dyer 312. p. 88.

The Master dies, &c. before preferment.

Co. 4. 117. b.

Co. 4. 118. b.

The Mrs. marries.

** That is, having cure of Souls.*

Co. 4. 119. a.

And note, That there is a *Proviso* in this Act, that though a Dutcheſs, Marchionefs, Counteſs, or Baroneſs, do marry an Husband under the degree of a Noble Man or Baron, that yet nevertheless ſhe may retain two Chaplains, which ſhall be qualified within this Law.

What preferments are not within this Law.

And it is declared by this Act, that Deanries, Arch-Deaconries, Chancellorſhips, Treasurerships, Chaunterſhips or Prebendaries in any Cathedral or Collegiate Church, or any Parſonage that hath a Vicar endowed, or any Benefice perpetually impropriated, are not to be eſteemed Benefices with cure of Souls within this Act.

Co. 4. 118. a.

And if any Duke, Lord, or other perſon, whoſe Chaplains are qualified within this Law, ſhall have a double capacity to qualifye his Chaplains; as if a Duke, &c. be made Lord-Warden of the *Cinque Ports*, or a Baron, Maſter of the Rolls, Knight of the Garter, &c. in all theſe caſes ſuch Duke, Baron, &c. can but qualifye his number of Chaplains, according to his beſt qualification only.

Chaplains retained in the life of the Father.

Co. 4. 9. a.

And if the eldeſt Son of a Duke, Marqueſs, &c. retain Chaplains in the life time of his Father, who after dies, and the honour deſcends upon ſuch Son; yet this retainer will not qualifye his Chaplains to have Pluralities within this Statute, becauſe at the time of the retainer he was not capable to qualifye them. *Et quod ab initio non valet, tractu temporis non convaleſcit.*

Lord diſcharges Chaplains after they are preferred.

Co. 4. 90. a.

If a Duke, Marqueſs, &c. retain his full number of Chaplains which are advanced, and then diſcharge them, yet he cannot, during their lives, qualifye any other within this Statute.

But

But if a Duke, Marquess, &c. that has power within this Act to qualifie Chaplains, at one instant of time retain his double number of Chaplains, or any supernumerary Chaplains; in that case, those only shall have the benefit of qualification that are first preferred. *Quia in æquali jure melius est conditio possidentis.*

A greater number of Chaplains retained together.

Co. 4. 90. a.

Dyer 312. p. 82.

If one that is qualified within this Statute take a second Living incompatible; and be instituted or inducted into the same before he have obtained a Dispensation, the first is void; though Dyer makes a *quare* of it.

Co. 4. 79. b.

Dyer 312. p. 88.

And note that it hath been resolved, That the King himself cannot dispense with this Law. *This Law is not dispensable.*

Dyer. 351. p. 2. 327. 2. p. 4. Trin. 18 El. C. B. Coxes Case.

If a Parson have a Living under the value of 8*l.* and take another without Dispensation, the first is void; and if he do not read the 39 Articles, or do not do the other things prescribed in the sixth Chapter of the first Book, whereby the second Living is void; yet that helps not, but that the first Living is void; and the Patron may present, but no Lapse will incur until a legal Deprivation and notice to the Patron.

Vaughans Rep. 129. Shute versus Higden.

But if one that is qualified within this Law to have two Livings incompatible, shall neglect at the time of his Institution to subscribe to the 39 Articles of Religion, though he be after inducted into the second Living, yet this shall not make the first void, for his Institution and Induction were both void *ab initio*; but if such person had subscribed the Articles, at the time of his Institution, and had after neglected to read them within two months after his Inducti-

A Pluralist neglects to subscribe or read the 39 Articles.

Dyer 377. b.

Co. 5. 102. b.

Hob. 157.

Vaughan 129.
Sec.

on into the second Living, this makes both Livings void (as was lately adjudged) because for two months he was compleat Parson of the second Living.

Mob. 157.

And if a Parson, &c. that is qualified within this Statute to have Plurality of Livings incompatible, be made a Bishop, his qualification ceases, so that after he cannot take two Benefices incompatible by force of such qualification; but if he had two Livings before he was made Bishop by qualification and dispensation within this Statute, he may retain them by *Commendam*: and although he were the King's Chaplain, it alters not the case; for by the acceptance of a Bishoprick he ceases to be the King's Chaplain within this Law.

Parsons Law,
l. 2. 14 & 15.
Uniting a Living is a Plurality.

Parson and Vicar of the same Church, Si, &c.

And if a Parson have one Living incompatible, he cannot obtain another with Cure to be united, unless he be qualified and have a Dispensation, but that the first will be void.

Mr. Hughes in his *Parsons Law* puts two Cases, which he is of Opinion are out of the danger of this Law. The first is, where there is a Parsonage and Vicarage endowed, and the Parson without dispensation or qualification accepts the Vicarage: and he conceives, that notwithstanding that these are two several Advowsons and Benefices, and that several *Quare Impeditis* may be brought of them, and that several Actions are maintainable by the Parson and Vicar concerning their possessions; that yet nevertheless, the presenting of one person to both is no Plurality within this Statute or the Canon: because the Parson and Vicar have both but one Cure of Souls: Besides, there is a *Proviso* in the Act; That no Parsonage with

a Vicarage endowed shall be accounted a Benefice with cure of Souls within that Act.

But his other case seems more doubtful, and it is put where a Church has two Rectories, *Two Rectories in one Church.*

and each has cure of Souls *per se* and are incompatible, and one person obtains both these Livings without qualification or dispensation.

This case he conceives to be both out of the danger of this Act and the Canon. 1. Because

it is not in *pluribus Ecclesiis*. 2. When there

are several Advowsons in one Church, neither

Parson hath the whole cure of Souls; and the

words of the Statute are, *Having no Benefice*

with cure of Souls of the value of eight pounds,

takes and accepts another Benefice with cure of

Souls, &c. But here the Church is one and

the same, and the cure of Souls the same; and

therefore as he conceives neither within the

danger of the Statute or Canon: but in a private

Report that I have, this very point came in ques-

tion in the latter end of the Queens time, and

the Reporter says, That *Walmesly* and *Beau-*

mont were of Opinion, that this Case was with-

in the Statute: but *Anderson* doubted, and seem-

ed to incline to the contrary. *Ideo quere inde.*

By the Resolutions of the several Cases before

mentioned, it is worth observation, how the

Judges of the Common Law have endeavoured

to advance this Law, and restrain the qualifica-

Cooper versus

Beauchampe.

P. 37 El. C.B.

There is now a

1000 qualifica-

tions at least in

England by Ser-

vice, besides the

Chaplains of

the King, Queen,

Princes of the

Blood, and Dowagers, and probably as many more by birth and dignities,

and there are about 4300 Livings in England of 10 pound per annum in

the Kings Books, and upwards; and it is not the least Livings the Pluralists

catch at, though at first they crept into the Church, where Livings were so

small they were not able to maintain a Minister; and if the 41 Canon of

King James were observed, many mischief in this case might be prevented.

Co. 2 Inst. 627.

tions :

tions: And yet when all is done, this Law produces little more effect, than the transferring the power of Dispensations in this case from the Pope, and scattering it amongst the Nobility and others; and how many Pluralists are there in *England*, that hardly see either of their Livings in a year? so that generally the best Livings in the Kingdom are served with poor Curates, and no hospitality kept: A thing worth the Consideration of a Parliament.

And it is to be hoped that our Noble Lords, when they consider the great damage the Church suffers by Pluralities, the many poor Souls that are neglected in danger to perish, the great discouragement it is to Learned Men, when they see many of meaner worth enjoy two Livings apiece, besides Prebends, Deanries, *Sine Cura's &c.* and the abler and better Man, for want of Friends is never able to rise higher than a poor Curacy of twenty or thirty pounds a year, when they consider how great a scandal it is to our Church, and it is to be feared, attended with a Curse; I say, it is to be hoped their Lordships will become so much Self-deniers, as to lay down this Priviledge where they received it, certainly a blessing and the prayers of the poor Clergy would attend it, and if advantage should be reckoned in the case, I know none their Lordships enjoy by it, for I am bound to say that for their Lordships honour, that I do not know a Lord within the compass of my knowledge, that keeps a benefited Clerk for his Domestick Chaplain, but have Chaplains of their own, and allow them honourable stipends and preferments in due time, but if their Lordships should not be willing

The Lord Chancellor Elsmere at the Conference at Hampton-Court, affirmed he never gave any of the Kings Livings to Pluralists, a worthy President. Fullers Ecclesiast. Hist. lib. 10. p. 16.

ling to lay aside this priviledge, the Archbishops that have the power of Dispensation, might remedy it in part, or in all, or his Sacred Majesty in denying Confirmation. God grant all may be done for the good of the Church.

CHAP. V.

The fifth Chapter shews what Simony is, and who shall be said to be guilty of it, and what are the dangers ensuing thereupon.

HAVING shewed my Clerk how to obtain a Benefice, and likewise those which are qualified how to take a second Living; It rests that I should shew them what is to be done after Induction to confirm them in their Benefices: But because Simony is not only scandalous to the Clerk that is guilty of it, but also very dangerous; and I told my Clerk in the second Chapt. that he must obtain his Presentation without any corrupt or simoniacal contract; I thought it fit by the way to let my Clerk know, not only what Simony is, but likewise the danger that attends it. Simony by the Canonists and Schoolmen is defined to be, *Studiosa voluntas emendi vel vendendi aliquid spirituale aut spirituali annexum opere subsecuto.* And Thomas Aquinas says, *Quod Simonia dici videtur à Simone Maggo, qui donum Spiritus Sancti emere voluit, ut ex venditione Signorum quæ per eum fierent multiplicatam pecuniam lucraretur; & sic illi qui spiritualia vendunt, conformantur Simoni*

What Symony is. Panormit. c. Nemo extra eo, &c. Tho. Aq. 2. 2. c. q. 100. Art. 1. Cro. El. 789. Tho. Aq. ibid. Art. 4.

D Mago

Hoveden in his History of H. 2. mentions a Canon made by Richard Archbishop of Canterbury, that the Patron that presents by Simony should lose his Advowson for ever. Speed 505. a. In Registr. hab. 1. q. 12. Canon, Quicunque.

Ibid. Canon Presbiter. It hath been held that a Patron that presents by Simony should lose his Patronage for ever. Hoveden H. 2. p. 310. Speed 505. a. Act. Apost. c. 8. v. 21. &c.

Division.

Canons against Simony.

Mago in intentione, in actu vero illi qui emere volunt : Illi autem qui vendunt in actu imitantur Giezi discipulum Helisæi, de quo legitur 4. Reg. c. 5. quod accepit pecuniam à leproso mundato, unde venditores Spiritualium possunt dici, non solum Simoniaci, sed etiam Giezitæ. And St. Gregory says, Quicunque sacros ordines vendunt aut emunt, Sacerdotes esse non possunt, ut scriptum est. Anathema danti, Anathema accipienti, hæc est Simoniaca hæresis : Quomodo ergo, si anathematizati sunt, & sancti non sunt, sanctificare alios possunt? Et eum in Christi corpore non sunt, quomodo Christi corpus tradere vel accipere possunt? qui maledictus, benedicere quomodo potest. And the same Holy Father further says, Si Presbyter per pecuniam Ecclesiam obtinuerit, non solum Ecclesia privetur, sed etiam Sacerdotii honore spoliatur. And it appears clearly, that the very intention to buy Spiritual Gifts or Preferments, carries with it the guilt of Simony, as well as the act it self: And therefore the holy Apostle said to Simon Magus, Cor enim tuum non est rectum coram Deo; pœnitentiam itaque age ab hac nequitia tua, & roga Deum si forte remittatur tibi hæc cogitatio cordis tui: But this is in foro conscientie only, and not punishable by any Human Laws, unless it proceed to the Act.

Simony by the Canonist is distinguished into *Simoniæ* & *Simoniacus*: The first is where the Clerk comes in by Simony, whereunto he is not party or privy: *Simoniacus* is he which obtains a Spiritual Preferment by a corrupt and simoniacal Contract, to which he is party or privy, and consenting.

Against this corruption in the Church many Canons

Canons have been made, amongst which I shall instance only two, and those Provincial ones of our own Nation. The first was made in the year of our Lord 1229. in the time of *Richard Withershead* Archbishop of Canterbury, and is as follows.

Nulli liceat Ecclesiam nomine dotalitatis ad aliquem transferre, vel pro præsentatione alicujus personæ pecuniam vel aliquid aliud emolumentum pacto interveniente recipere: quod si quis fecerit, & in jure convictus vel confessus fuerit, ipsum tam Regia quam nostra freti auctoritate patronatu ejusdem Ecclesiæ in perpetuum privari statuimus: But it was not sufficient by a Canon to deprive a man of his Freehold or Inheritance, be the word *in perpetuum* taken for life, or for ever, as it imports; neither was this Canon ever put in execution, or attempted so to be, that I find.

Lindwood c.
Nulli Licens
Ecclesiam, &c.

The other Canon I made mention of, I find amongst the Canons of *Othobonus*, the Popes Legate here in England, which is to this effect.

Cap. Quia plerumque.

Quia plerumque evenire didicimus, quod, cum ad vacantem Ecclesiam fuit præsentatio facienda, is qui præsentandus est prius cum Patrono de certa Summa de bonis Ecclesiæ sibi annuatim solvenda paciscitur, & sic pactus ad Ecclesiam præsentatur. S. Nos huic actui tam Simonie vitium quam Ecclesiæ dispendium ingerenti occurrere intendentes, universas promissiones & pactiones hujusmodi penitus revocamus, & eas imposterum fieri districtius inhibemus: Et si facti fuerint, vires aliquas decernimus non habere.

But this Canon was of as little effect as the other, as to the making the Contracts void, which were only determinable at the Common

Cro.El.788,

789:.

Per Warburton.

* Per Bullam

Sixtinam pri-

vatur ipso facto

de omnibus dig-

nitatibus, bene-

ficiis, officiis, &

efficitur inhabi-

lis ad omnia.

3 Inst. 154.

Tho.Aq. 20. 2^a.

q.100.Art.1.

Sect.2.

St.Aug.de hære-

sibus in princi-

pio.

St.Greg.in Reg.

hab.1. q.1.&c.

d.1.

Stat.31 El. c.6.

Statute a-

gainst Simony.

* Relates to

Patrons.

† This is to Ei-

shops.

‖ Donatives.

* Bishops.

Law, where this Canon could not be pleaded in Bar. I have mentioned these two Canons, not for the validity or use so much, as to satisfy the Reader what Provincial Canons we have against Simony, and to how little effect they were before the Statute of 31 Eliz. But there were some general Canons of the Church of greater force, whereby *Simoniace* is punished by Deprivation, and *Simoniacus* by Deprivation and perpetual disability *, not only as to the Church he was presented to upon a Simoniacal Contract, but also to all others: And being *malum in se*, it is not dispensable either by the King or any other.

And it has been held by some of the Fathers to be a Heresie, if not the Sin against the Holy Ghost: But neither the greatness of the sin, nor the severity of the Canons were sufficient to restrain this evil in the Church, till the Parliament of England took it into their care, and in the 31 Eliz. it was enacted:

1. That if any person or persons, for any sum of money, reward, gift, profit or benefit, directly or indirectly, or for or by reason of any promise, agreement, grant, bond, covenant, or other assurance for any sum of money, reward, gift, profit, or benefit whatsoever, directly or indirectly, shall * present, or † collate any person to any Benefice with Cure of Souls, Dignity, Prebend, or Living Ecclesiastical, &c. or ‖ give or bestow the same for or in respect of any such corrupt cause or consideration, that then every such Presentation, Collation, gift, and bestowing, and every admission, * investiture and induction thereupon shall be utterly void, &c.

And that the Queen, her Heirs and Successors,

to

to present, collate, &c. for that one Turn only.

And that every Parson, &c. that shall give *Penalty.*
or take any such sum of mony, &c. or that shall
take or make any such promise, &c. shall forfeit
and lose the double value of one years profit of
every such Benefice. And the person so corrupt-
ly taking any such Benefice, shall thereupon and
from thenceforth be adjudged a disabled person
in Law to have and enjoy the same Benefice,
&c.

2. And further, that if any person shall for *Against Preci-*
any sum of mony, reward, &c. (ut supra) direct- *pitate admissio-*
ly or indirectly (other than for small and lawful *or institution,*
fees) or for or by reason of any promise, &c. ad- *&c.*
mit, institute, install, induct, invest, or place a-
ny person in or to any Benefice with cure, &c.
That then every person so offending shall forfeit
and lose the double value of one years profit of
such Benefice, &c. and that the said Benefice, &c.
shall be eftsoun void, &c. And that the Patron,
or person to whom the Advowson, &c. shall and
may by virtue of this Act, present or collate, &c.
as if the person were naturally dead; but no lapse
hereby to incur till six months after notice.

3. And if any Incumbent of any Benefice with *Against corrupt*
cure of Souls, do or shall corruptly resign or ex- *Resignations*
change the same; or corruptly take for or in respect *and Exchanges.*
of the resigning or exchanging of the same, direct-
ly or indirectly, any pension, sum of mony, or benefit
whatsoever; that then the giver and taker of
any such sum, &c. corruptly, shall lose double the
value of the sum so given, taken, or had; the one
half to the Queen, &c. and the other moiety to
him that will sue for the same, &c. in any of
her Majesties Courts of Record, in which no Ef-
foin, &c.

*Ecclesiastical
Censures saved.
Simony in or-
daining and
giving Orders
to preach.*

4. *Provided, that this Act shall not restrain any censures Ecclesiastical, &c.*

5. *And further it is provided, that if any person shall receive, or take any money, fee, reward, or any other profit directly or indirectly; or shall take any promise, agreement, covenant, bond, or other assurance, to receive or have any money, fee, &c. directly or indirectly, to him or themselves, or any of their, &c. Friends (all lawful and ordinary fees excepted) for or to procure the ordaining or making of any Minister, &c. giving any order and license to preach, shall lose forty pounds; and the Minister so made ten pounds. And that if such Minister within seven years next after such corrupt entring into the Ministry, &c. shall accept or take any Benefice, living, or promotion Ecclesiastical, the same living after Induction, &c. to be void. And that the Patron may present, &c. as if the party so inducted were naturally dead; the one half of the said forfeitures to be to the Queen, &c. and the other half to the Informer, be recovered (ut supra.)*

*Canons against
Law.*

And I do not observe that the corrupt Patrons were in danger to suffer by any Law or Canon before this Law was made; for, as I said before, his right could not be taken away by a meer Canon not confirmed by Parliament; and before this Law was made, the Incumbent that came in by Simony held the Living which he obtained by Simony, until he was legally and judicially deprived by Sentence Ecclesiastical, wherein he often escaped for want of such proof as the Spiritual Laws required; but this Statute strikes at the root, and makes as well the Presentation,

sentation, as the admission, institution and induction void: So that if this Statute had not given the presentation to the Queen, the true Patron might have presented a new Clerk; or in his default the Church would have lapsed. But by this Act the corrupt Patron does not only lose the presentation to the King *pro hac vice*; but also two years value of the Church, not according to the valuation in the King's Books in the First-fruit Office; but according to the true and utmost value of the Church. 3 Inst. 154.

But if one that has no right to present shall, 3 Inst. 153. by means of a corrupt and Simoniackal agreement present a Clerk, who is by his presentation admitted, instituted, and inducted into a Church; yet this shall not entitle the King to present: for though the Act of Parliament makes all void, yet an Usurper cannot forfeit the right of another in whom there is no fault.

Note, That the Patron shall lose his presentation within this Law, although the Clerk be not privy to the corrupt contract. Co. 12. 74.

And it should seem by the penning of this Act, that the forfeiture of the double value of the Church is incurred by the corrupt contract only; but the presentation is not forfeited to the King, unless the Clerk be *de facto* presented or collated upon such corrupt contract.

And it matters not whether the Incumbent, *Clerk not privy to the Simony.* that comes in by Simoniackal contract, were privy thereunto or not, as to making the Church void: But the great question is, Whether the Clerk that is presented upon a Simoniackal contract, to which he is neither party nor privy, be disabled for that Turn to be presented by the King to that Church. How the Canon Law stands in this Case, see Gratian. Causa 1. q. 4. & Gregorius Decretals de Simonia,

Fowler versus
Laphorn,
P.17 Jac. B.R.

I have seen the Report of a Case in the latter end of the Reign of King *James*, where it was adjudged, That if a Clerk were presented upon a Simoniackal contract, to which he was not party or privy, that yet notwithstanding it was a perpetual disability upon that Clerk, as to that Living.

Cro.El.788.

And in the Case of *Baker and Rogers*, M.42 and 43 *El. B. R.* The Case was, *Baker* agreed, the Church being void, to give the Patron 180*l.* for the presentation, who presented his brother, who knew nothing of the corrupt contract till after induction : And though it was clear, that the grant of the Presentation during the vacancy was meerly void, and that *Baker* presented as an Usurper ; that yet notwithstanding the Clerk was in by the corrupt contract ; because it was not to be intended, that the Patron would have suffered the Usurpation, had it not been for the corrupt contract: and there it should seem by Mr. Justice *Warburton*, that the Clerk was disabled *quoad hanc*.

Cro.Jac.385.
Bulst.3.92.

And in a Cause between the King and the Bishop of *Norwich*, *Cole and Sair*, Sir *George Crook*, who was a Counsel in the Cause, reports that Sir *Edward Cook* affirmed it had been adjudged, That if a Church be void, and a stranger contracts for a sum of money to present one who is not privy to the Agreement, that notwithstanding the Incumbent coming in by the Simoniackal contract, is a person disabled to enjoy that Benefice, although he obtain a new Presentation from the King ; for the Statute, as to that Living, has disabled him during life.

3 Inst 154.

I must acknowledge, if the Law be so taken, it is very severe; but let us hear Sir *Edw. Cook* him-

himself speak, and he in his Coment upon this Statute, says, that it was adjudged in the before-mentioned Case of *Baker and Rogers*, that where the Presentee is not privy nor consenting to any such corrupt contract, as is forbidden by this Statute (because it is no Simony in him) there the Presentee shall not be adjudged a disabled person within this Act; for the words of the Statute are (*And the person so corruptly giving:*) So as he shall not be disabled, unless he be privy to the contract; and so says he there it was resolved, *M. 13 Jac.*

And Sir *Edward Cook* in that Book, that goes under the name of his *twelfth Report*, and without doubt was his own, reports, That it was so adjudged in the Case of *Dr. Hutchinson* Parson of *Kenne* in *Devonshire* by the whole Court, that if a Clerk be presented upon a corrupt contract within this Statute, although the Clerk be not privy thereunto; yet the presentation, admission, and induction are all void within the Letter of the Statute: for the Law intendeth to inflict punishment upon the Patron, being the Author of this corruption, by the loss of his presentation; and upon the Incumbent, who came in by such a corrupt Patron, by the loss of his Living, although he never knew of the corrupt contract; but if the Presentee were not cognizant of the corruption, then he's not within the clause of disability within the same Statute; and so (says he) was the opinion of all the Judges of *Serjeants-Inn* in *Fleet Street*, *M. 8. Jac.*

Co. 12. 101.
3 Inst. 154.

And it seems to me upon the penning of the Statute, that this Opinion is more rational than the former, for the words of the Statute are;

That

It should seem
that by the Ca-
non Law one
that is Simoni-
acè promoted,
may upon a vo-
luntary resigna-
tion be dispenced
with to have
the same Li-
ving again.

Greg. Decret. de
translatione E-
piscop. tit. 7. & l.
5. tit. 3. cap. 26.

* *Quære.*

† What contract
shall be said
Simoniacal.

¶ Hill. 16 Jac.
rot. 667. C.B.

More 916.
Cro. El. 685.
Smith versus
Shelburne.

Winch. 63.
Sheldon versus
Brett.

Hob. 165.

That the person so corruptly taking, procuring,
seeking or accepting, shall, &c. from thenceforth
be adjudged a disabled person in Law, to have
or enjoy, &c. And though the Incumbent in this
case take and accept the Benefice upon the cor-
rupt contract, yet as to him it is not corruptly
taking. * But this being a point thus contro-
verted, I shall not take upon me to determine,
but leave it to the judgment of the more learned.

† I shall in the next place shew what con-
tracts have been held Simoniacal within the
meaning of this Law.

In a Cause between Dr. Graunt and one Bow-
den, it was held || (upon an Evidence to a Jury)
that where two Parsons agreed to change their
Livings, and the one promised his Patron, that
if he would present the other with whom he
was to exchange, that he should make the Pa-
tron a Lease of his Tythes at such a Rent; and
this was held Simony, although the other was
not privy to the contract, he making the Lease
after.

The Father in the presence of his Son being
a Clerk, purchased the next Advowson of a
Church, the present Incumbent of the Church
being sick, and not likely to live, who soon after
died, and he presented his Son; and this was
held Simony within this Statute: But if this had
been done in the absence of his Son, it had not
been Simony, because the Father is bound to pro-
vide for his Son. *Quære* of the difference.

And by *Hutton* it was held Simony to pur-
chase the next Advowson, the Incumbent being
sick.

In the Case of one *Winchcombe* against the
Bishop of *Winchester* and *Puleston*, the case was,
One

One *Say* bargained with the Patron (the Incumbent being sick) for ninety pounds to present him when the Church should be void, and for the better assurance took a Grant of the next Avoidance to Friends in trust: The Incumbent died, *Say* was presented, and this was held Simony within this Law.

There is of late time a practise introduced by *Bonds for Resignation*. corrupt Patrons, that, if not nipt early in the budding, will make this good Law of no effect; I mean the taking Bonds for resignation. And this practise took its rise from two cases in Sir *George Crook's Reports*.

The first was between *Jones* and *Laurence*, Cro. Jac. 248. 8 *Jac.* The Case was thus: *Jones* had a Son 274. which he intended to be a Clergy-man, and having obtained a Presentation from Queen *Eliz.* for the Church of *Streetham*, agreed with the Defendant that he should be presented, so that he would resign when *Jones's* Son was qualified for the Living, whereupon the Defendant entred into a Bond of a thousand Marks penalty to the Plaintiff upon this condition (having first recited the Agreement) that if the Defendant within three months after request should absolutely resign his said Benefice, that then &c. And in an Action of Debt brought upon this Bond, the Defendant pleaded *non requisivit*, which was found against him; and in Arrest of Judgment it was moved, That this Bond was made for the performance of a Simoniacal contract, and therefore void; but notwithstanding the Court gave Judgment for the Plaintiff; and two reasons are given for the Judgment; The first was, because there was no averment of the Simony; the second, that it was not material as
to

Cro.ubi supra.

to the Bond, because that Statute did not make the Bond or Contracts void, but only the Presentation, &c. for this I clearly infer from the conclusion of the case. But I confess the sense of the Court was, that in truth, if a man be preparing a Son for the Clergy, and have a Living in his disposal, which falls void before his Son be ready, he may lawfully take a Bond of such person as he shall present, to resign, when his Son is become capable of such Living; and I have nothing to say against that Opinion, but it is very just and reasonable, Nature obliging that every one should take care for his Posterity: But if a Patron take a Bond absolutely to resign upon request, without any such cause as the preferment of a Son, or to avoid Pluralities, or Non-residence, or such reasonable cause, but only to a corrupt end and purpose to exact money by this Bond from the Incumbent, or attempt it, tho perhaps the Bond may be good against the person that entered into it, yet I am clear of Opinion for my own part, that the said Bond makes the Church void, and gives the presentation to the King; and it should seem in *Jones* and *Laurence's* Case, that if Simony had been averred, it would have been left to a Jury to have adjudged what the intention of the corrupt Patron was.

Cro.Car. 180.
Hut.iii. Jones
220.

The other case upon which these subtil Simonists build, was between *Babington* and *Wood*, 5 Car. 1. B. R. where the Case was likewise in Debt upon an Obligation with a Condition, that whereas the Plaintiff intended to present the Defendant to such a Living, that if the Defendant upon request after his admission should resign, that then the Bond to be void, &c. Upon Oyer of this Bond and Condition, the Defendant demurred,

demurred, and Judgment was given for the Plaintiff: But all the Court conceived, that if the Defendant had averred, that the Obligation had been made with intent to exact mony, make a Lease,&c. which in it self had been Simony; then upon such a Plea peradventure it might have appeared to have been Simony, and then it might have been a question, whether the Bond had been good or no; but upon this Demurrer it did not appear there was any Simoniackal contract, and such a Bond might be made upon a good and lawful design, as the preferment of a Son, as in *Jones* and *Laurences's* case before, to avoid Non-residence, Pluralities,&c. So that it appears by both these Cases, that Bonds taken upon prudent and just ends to resign, are non-Simoniackal, but where such Bonds are taken upon corrupt designs, and it be made appear by any subsequent practice or action, it is clearly Simony, as if the Bond had been expressly to pay mony; for what difference is there between a Bond expressly to pay mony, and a Bond to resign, which is to pay mony, if the Patron say, either pay me so much mony or resign, when all the world knows in such a Case the Parson must pay the mony, or resign and be undone? And the world shall never perswade me, that those Reverend Judges that gave these Judgments ever intended further: and I hope that those Reverend Judges, that now supply their places, will discountenance and discourage such practices that tend so much to the ruin of the Church and Religion; for I know no Law that tends more to the advancement of learned and religious men than this Law doth, and therefore ought to have a benign construction to the end it was designed.

I

Noy 22. T. 15
Jac. ro. 1051.
C.B.

I find a Case reported, I cannot say that it is by an Authentick hand; but such as it is, I will give it the Reader; it was between Sir *John Pascal* and one *Clerk* in the 15th year of King *James*, upon Evidence to a Jury it was held, that such a Bond was Simoniackal, but the Circumstances not appearing in the Book, the Case can be of no great Authority.

But before I shake hands with these Bonds of Resignation, it will be convenient I give my young Clergy-man some Cautions against them; for it is an old saying, The Resetter is worse than the Thief, for without Resetters there would be few Thieves.

*Advice against
Bonds for Re-
signation.*

And 1. I hold it a great disreputation for any Clergy-man to give any such Bond, which may have the least tincture of Simony; nor do I believe any man of worth will do it, unless it be upon such reasons as aforesaid.

2. If such Bond carry with it a Simoniackal corrupt design, it makes the Clerk no less guilty of Simony than the corrupt Patron; and then the Clerk not only loses his Living by this Statute, but is for ever incapacitated to have it by any future Presentation, and by the Canon-Law is to be degraded and incapacitated to all other,

Concil. Remens.
si quis vendide-
rit. 3 Inst. 153.
Margine Noy
72.

C. 1. q. 1. Presbyter si, &c.

Lastly, If he do not resign upon request, he is subject to the whole penalty of the Bond; for Simoniackal Bonds, Contracts, &c. are not made void by this Act, but only the Presentment, &c. And so you may observe a difference between *malum in se*, and *malum prohibitum* by the Statute, or by the Canon Law, whereof the Judges at Common Law take no notice.

These Bonds for Resignation are become so
fre-

frequent, that hardly a Living passes, unless by Persons of Honour, without them, and very ill use is made of them. There's a poor Vicar in my Neighbourhood that has a Vicarage but of 40 *l. per annum*, and was forc't into one of these Bonds to obtain it, and his Patron takes from him Tythes of half the value of the Church, and he dares not question him for them; *Opus est medico*. It is time for the Clergy to prefer a Bill in Parliament, not only to make all such Bonds void, but likewise all Bonds, Bills, Covenants, Promises, Judgments, Statutes and Recognizances, made or entred into upon any Simoniackal contract. Certainly no good man would oppose it; a fit undertaking for my Lords the Bishops.

It is now to be considered, what Covenants or Agreements shall be said to be Simoniackal within this Law.

What Covenants and Agreements are within this Law.

Cro. Car. 425.

If a Father-in-Law, upon the marriage of his Daughter, covenant with his Son-in-Law without any consideration, but voluntarily, that when such a Church falls void, which is in his gift, that he will present him to it, this is no Simony within this Law; but it should seem, that such Covenant in consideration of marriage, or any other consideration had, made it Simoniackal.

So where the Patron took a Bond from the Presentee to pay 10 *l.* yearly towards maintenance of his Predecessor's Son, whilst he remained in the University unpreferred, was held no Simony: And in that case it was said by *Foster* Justice, that it was adjudged in the Earl of *Sussex's* case, where the Patron took a Bond of the Incumbent to pay 5 *l. per annum* to the Widow of his Predecessor, it was no Simony; these were good

Noy 142.

Baker versus Mountford.

good charitable Resolutions; *sed quare rationem inde*; and *Foster* said, that notwithstanding great opposition in that case, the Parson enjoyed the Living at that time.

In the next place it will be fit to consider, what Church Preferments are within this Law; the Statute only names Benefices with cure of Souls, Dignities in the Church, Prebends and Livings Ecclesiastical. The word Benefices with cure of Souls, seems chiefly aimed at Parsons and Vicars in Churches Parochial: Dignities comprehend Archbishops, Bishops, Archdeacons, Deans, Chancellors, Treasurers, Chaunters, Precentors, Officials, &c. For Dignities Ecclesiastical are defined by the Civilians to be *Administratio cum Jurisdictione aliqua conjuncta*. And *Lindwood* tells us, *Dignitas cognoscitur altero de tribus modis, primo quando beneficium habet administrationem rerum Ecclesiasticarum cum Jurisdictione: Secundo ex eo quod habet nomen dignitatis cum prærogativa in choro & capitulo: Tertio quando constitutio vel consuetudo Ecclesiæ habet, quod beneficium habeatur & reputetur pro dignitate.*

2 Inst. 155.

Lindwood.
cap. ut Clericalis
verb. dignit.
Duarius de
sacris Eccles.
Ministr. & Be-
neficiis. lib. 2. c. 6
Lindw. cap. Esu-
rientes avari-
tæ verbo dig-
nitate.

Cap. ut Clericalis
verb. dignit.
But for Autho-
rities at Com-
mon Law which
shall be Digni-
ties, see 27 H. 6.
5. 25 E. 3. 41.
Br. no fine 25. 17
E. 3. 31. 11 H.
4. 40. 14 H. 6.
14. 27 H. 6. 3.
27 H. 8. 10.

And in another place speaking of Dignities, he says, *Proprie loquendo de dignitate ordo Episcopalis dicitur dignitas; sic Abbates, Priores conventuales, & officiales Episcopi, dicuntur dignitates, & in inferioribus Episcopo jus non imponit nomen dignitatis, nisi Archidiaconis & Archipresbyteris, propter Jurisdictionem, & præminentiam, quas habent super alios: Imo licet (says he) Archidiaconi nullam haberent Jurisdictionem ex consuetudine, tamen ratio nominis sonat in dignitatem, &c.*

Prebends are particularly named, and Livings Ecclesi-

Ecclesiastical are words of a large extent, and draw in Donatives within the penalty of this Law, as hath been adjudged, though they have no cure of Souls. *Fletcher versus Machaller, T. 7. Car. 1. B.R.*

Having held the Reader something long in my Discourse upon the matters relating to the first Paragraph of this Statute, I shall, after some general Observations upon it, draw to a Conclusion.

And first it is to be observed, That where any Clerk is in by Simony, or any other dignified person, every stranger as well as the King, may take advantage of it: And therefore if the Parson, Vicar, or other dignified Person, shall bring any Action for the Tythes, or other things belonging to his Church; the Defendant may avoid the Action, by proving that the Plaintiff obtain'd his preferment by a Simoniack contract. *Who may take advantage of Simony, quod nota. Sir Jo. Rowse versus Wright. P. 17 Jac. Hob. 167, 168, 177.*

And note, That a Simoniack Contract, where the party is not presented in pursuance of it, is not within the penalty of this Law; but it should seem, that if one that has no right present a Clerk upon a Simoniack contract, he is within the penalty, though an Usurper, but not as hath been said, to give the King the Presentation. *Contract not executed. Hob. 167.*

It hath been a question, If the Clerk which comes in by Simony dye in possession of the Church, whether the King should lose his Presentation: But it hath been resolved that he shall not; for the Statute makes the Presentation, Admission, Institution, and all void; so that the Church was never full of an Incumbent, & *nulum tempus occurrit Regi.* But if the King suffer an Usurpation by the Patron, or any other, presenting another Clerk, who is instituted and

inducted, and after dyes Incumbent, in such case the King loses his Presentment; and so it should seem, if the Incumbent resign, or be deprived, the Church having been once full.

Simony and Patron and Clerk free.

Bath versus
Potter, p. 17
Jac. B.R.

And note, there may be Simony, and neither Patron nor Clerk consent or be privy to it; and yet the Church for that turn is by Statute given to the King: If the Clerk be presented by the means of such corrupt contract, though neither Patron nor Clerk were privy or consenting to it; so the King, though he himself cannot be guilty of Simony, may present upon a Simoniackal contract between others, and such Presentation is void by this Act.

Pardon of Simony the effect.
Lea vers. Smith
M. 40 & 41 El.
C.B. contra.

Hob. 167.

Suppose a Clerk be presented upon a Simoniackal contract, and then the King or Parliament, that is, the King in Parliament with the Assent of his Lords and Commons, pardons all Simony by express or general words, though this may pardon the Penalties, yet the Church remains void.

De ministeriis & hab. l. 1. q. 1. Canon cum Ordinor.

I shall now conclude this Paragraph with the saying of a holy Father of the Church, viz. St. Ambrose upon this Subject; *Cum ordinaretur Episcopus quid dedit? aurum fuit: quid perdidit? anima sua fuit: Cum alium ordinaret quid accepit? aurum fuit: quid dedit? Lepra fuit.*

3 Inst. 155.
The reason of the Paragraph against precipitate Admissions.

I am now come to the second Paragraph of this Statute, which Sir Edward Cook (who was a Member of this Parliament) tells us was added to avoid hasty and precipitate admissions, institutions and inductions, &c. to the prejudice of those that have right to present, and thereby putting them to their Actions to recover their rights, and there are seldom Bribes (as I may say)

say) in this case given, where the Patron has a good and sure Title.

The taking or giving above the usual Fees in this Case, is as well dangerous to the Clerk as the Officer ; for the Church shall be void, so that the Patron, that has right to present, may present again ; and the Usurper and Officer that takes more than his fees for such expedition, forfeits double the value of the Benefice for a year, not according to the rate in the First-fruits Office, but according to the very true value : But upon this Clause no disability rests upon the Incumbent, but that he may by the true Patron be presented again ; nor Lapse, till after six months from the time of notice given by the Bishop, &c.

And observe the penning of this Clause : It *When the* is not that the Church shall be *ipso facto* void, or *Church shall be* that the Institution, &c. should be void ; but *void.* that it shall be estoons void, and that the Patron shall present, as if the person were naturally dead : So that it should seem the Church is once full by this institution and induction ; and hence there may some doubts arise, whether the Church shall be void *ipso facto*, or whether it must be avoided by Ecclesiastical Sentence of Deprivation : But it seems to me, that the Patron may present immediately without any Sentence Ecclesiastical.

3. The third Paragraph of this Statute is *Resignation and* made against such as shall corruptly for niony, *Exchanges Si-* pension, or other benefit, resign or exchange *moniacal.* their Livings with any other : In that Case as well the giver as the taker forfeits double the Sum of money, &c. given and received ; but this Clause works no avoidance or disability in the person that is guilty:

The Ecclesiastical Jurisdiction saved.

Cro.El. 788,
789.

The 4. Paragraph preserves the Ecclesiastical Jurisdiction, that they may proceed judicially to censure the Parties for their corruption in buying & selling Church Preferments: wherein, as should seem, the Ecclesiastical Laws in some circumstances are more severe than this Statute; for by that Law, as I take it, he that is convicted of Simony, is after incapacitated not only to that Living, but to all other Church Preferments; but of this be informed by the Canonist. But I know no reason, why those corrupt Patrons that take Bonds for resignation without any reasonable cause apparent, may not be called to an account before the Ordinary, and punished by Ecclesiastical Censures, if it appear they were taken to any corrupt end, or if afterwards he shall endeavour to exact money by colour of any such Bonds.

Corrupt giving Orders and Licenses to preach.

I am now come to the last Paragraph of this Statute, which is also a two-edged Law, that punishes as well the giver as taker of greater fee or reward than the ordinary and just fees for, or for procuring any person to be ordained or made a Minister, or giving any order or licence to preach, &c. but this is more severe upon the Clergy-man than the Officer: for the Officer only forfeits forty shillings, but the Clergy-man forfeits ten pounds, and all the Livings he shall take within seven years, are made void by this Law after Induction; so that for seven years an Incapacity lies upon the Clerk; how careful ought Clergy-men to be, what Fees they give for their Orders? And note the manner of the penning of this Paragraph, that the Church shall not be void till after Induction. The first Paragraph makes the presentation, institution
and

and induction, and all void : So that the Church in that case is never full. The second Paragraph makes it void, not till after the corrupt admission, institution, installation, induction, investiture or placing ; and this not till after induction ; by which means the Grantee of the next Avoidance that presents such Clerks , cannot present again : And so it is where the Patrons present by turn , the presenting such a Clerk Co. 5. 102. a. will satisfy a turn, if inducted.

Lastly, observe all pecuniary forfeitures and penalties within this Statute are given to the King and Informer, and are to be recovered by Bill, Plaint, Action of Debt or Information in any of his Majesties Courts of Record ; that is, the *Chancery, Kings Bench, Common Pleas*, and *Exchequer at Westminster* ; but not in any inferior Court of Record, and no effoign, privilege, protection or wager of Law is to be allowed ; but I conceive the privilege or protection of Parliament are not intended in these general words, but the common protections and privileges of Officers and Courts. *Ideo quære inde.*

How the forfeitures are to be recovered.

Gregory's case, Co. 6. 29.

Quære.

It is not proper for this Discourse to examine by what Authority any thing at all is taken for giving Orders, Admissions , Institutions, &c. since our Saviour says, *Gratis accepistis, gratis date* : However, since it is a thing (I doubt) too much practised, use has made it seem lawful, by which means it is swallowed as a due fee without examination of the matter ; I shall therefore put them that are concerned in mind of two other Canons, and then leave the matter to further consideration , and amongst those Canons that are called the Canons of the

See a Canon against it, and what Fees shall be taken by the Clerks.

Lindw. c. sieva & miserabilis.

Mat. 10. v. 8.

Apostles, I find one to this effect :

Can. 30.

Si quis Episcopus, aut Presbyter, aut Diaconus, per pecuniam hanc obtinuerit dignitatem, dejiceatur, & ipse ordinator ejus à communione omnibus modis abscindatur,

And in the Council of Chalcedon to the same effect, which follows :

Si quis Episcopus per pecuniam Ordinationem fecerit, & pretium redegerit Spiritus Sancti gratiam quæ vendi non potest, Ordinaveritque per pecuniam, Presbyterum, aut Diaconum, vel quemlibet de hiis, qui cognominantur in clero, promoverit, & dispensatorem aut defensorem, vel quemlibet qui subjectus est regulæ, pro sui turpissimi lucri commodo, is qui hoc attentare probatus fuerit, proprii gradus periculo subiacebit, & qui ordinatus est, nihil ex hac ordinatione, vel promotione quæ est pro negotiatione facta proficiat, sed sit alienus à dignitate, vel solitudine, quam pecuniis acquisivit, &c. Concil. Cabilonense, ca. 16. ad eandem sententiam.

But it may be it will be said, that these Canons are against selling of Orders, but not against ancient and just fees, to which hear what the Council of Orleans says :

Can. 3.

Ne quis Episcopus quibuslibet causis vel Episcoporum Ordinationibus cæterorumque Clericorum aliquid accipere præsumat, quia Sacerdotem nefas est cupiditatis venalitate corrumpi.

Can. 63.

And the Council of Lateran under Pope Innocent the Third, decreed, *Ne pro consecrationibus Episcoporum, aut benedictionibus, aut ordinibus, aliquid accipiatur.* And to the like effect is the Council of Braga, ca. 4.

Cap. Secunda &
Miserabilis.

And our own Canons are to the same effect, and limit the Clerks fees to twelve pence for Letters

Letters of Institution and Collation, and six pence for Letters of Orders : But he that has a mind to satisfy himself herein further, let him read that most excellent History of the Council of *Trent*, which is faithfully translated by Sir *Nathaniel Brent*, where this point is excellently discussed *Pro* and *Con*, where I will leave my Reader, and conclude this Chapter, and in the next place shew my Parson, Vicar, &c. what he is to do before, at, and after his Admission, Institution, and Induction.

CHAP. VI.

The sixth Chapter shews what a Clerk is to do before, at, and after his Admission, Institution, and Induction, to make him a compleat Parson.

NO man at this day is capable to be Par- Every Parson
son, Vicar, &c. before he is a Priest in and Vicar must
Orders, which he cannot be before he is four be a Priest.
and twenty years of Age, as has been said; and
if any person shall be admitted, instituted and
inducted into any Living before he is in Holy
Orders, his admission, institution and induction
are void by the late Act of Uniformity: Second- Stat. 14 Car. 2.
ly, He must make his Subscription according cap. 4.
to the said Act, and have a Certificate from the Subscription
Bishop, or &c. under his Hand and Seal, that and Certificate.
he hath so done; and then within two months
after he is inducted, he must, during Divine 13 Eliz. c. 12.
Service (that is, after some part of the Divine
E 4 Service

Read Prayers.

Read the Articles.

Stat. supra.

Co. 6. 25. b.

4 Inst. 324.

Stat. supra.

Declaration.

*Stat. 14 Car. 2.
cap. 4.*

Service of the Church for that day appointed is read, and before the whole is finished) read the Nine and thirty Articles of Religion in the Parish Church, &c. into which he shall be inducted, and declare his unfeigned assent and consent to all that is therein contained; and in default herein, the Church is *ipso facto* void without any sentence declaratory; and it is not enough for him to declare his assent to them so far as they are agreeable to the Word of God, or with any qualification, but positively.

And he must likewise upon some Sunday or Lords day, within two months after actual possession of such Benefice, &c. (which is intended within two months after induction or installation, &c.) read the Book of *Common Prayer* (i.e. the whole Service of the Church appointed for that day, as it is there appointed) and likewise declare his assent and consent to all the matters and things therein contained in these words; *I A. B. do declare my unfeigned assent and consent to all and every thing contained and prescribed in and by the Book, intituled, The Book of Common Prayer and Administration of the Sacraments, and other Rites and Ceremonies of the Church, according to the use of the Church of England, together with the Psalter or Psalms of David, pointed as they are to be sung or said in Churches, and the form or manner of making, ordaining and consecrating of Bishops, Priests, and Deacons.*

And such Parson, Vicar, &c. must within three months after his Institution, upon some Lords day, during Divine Service (that is, as hath been said, after some part of it be read, and before all be read) publicly and openly
read

read his Certificate from the Bishop, &c. of his Subscription to the Declaration following; and he must at the same time read the Declaration or Acknowledgment it self in the Church where he is to officiate, before the Congregation there assembled. The Declaration follows :

I A. B. declare, that it is not lawful upon any pretence whatsoever, to take Arms against the King : And, that I do abhor that treasonable Position of taking Arms by his Authority against his Person, or against those that are commissioned by him ; And that I will conform to the Liturgy of the Church of England, as it is now by Law established. And I do declare that I do hold, there lies no obligation upon me, or on any other person, from the Oath commonly called The Solemn League and Covenant , to endeavour any change or alteration of Government, either in Church or State ; And that the same was in it self an unlawful Oath, and imposed on the Subjects of this Realm against the known Laws and Liberties of this Kingdom.

And if any Parson, Vicar, &c. fail in the doing of any of these things before-mentioned, or any of these things be neglected , the Church becomes void; and the Clerk that makes such failure, in Case he shall sue for his Tythes , or any other Church duty, or other thing belonging to his Church: If the Defendant insist upon it, must prove the doing of all these things: But usually the Judges in favour of the Clergy, after they have been in possession of their Livings ten or twenty years, or any considerable time, will presume all these things regularly done, and will not put the Parsons, &c. to the precise proof of them.

And

Dyer 346. p.7.
Co.6.29.b.

*Advice to the
Clergy.*

And it is to be observed, that the Parsons, Vicars, &c. must upon the acceptance of every new Living or Ecclesiastical Preferment within this Law, repeat all these things; for the performance of all these things upon the taking of one Living, will not satisfy for any other.

I shall give my Reverend Clergy-men therefore this caution, that if any of them have accepted any Ecclesiastical Preferments, and have negligently omitted any of these things, and that thereby they may be lapsed to the King, that they obtain Presentations from the King *ad Corroborandum*; and that thereupon they perfect all their former neglects; or they may obtain Letters Patents of Confirmation, which may be pleaded in bar of any *Quare Impedit* after brought by the King.

Raftsals Entries.

Quare Imped.

Roy 22. plo.

528.b.

11 H.4.9.2.

Hob.302.

Dyer 392.p.70.

14 H.4.36.b.

25 E.3.47.a.

plo.528.b.

Raft.Entries.

Quare Imped.

in Roy 22.

And for the future I advise them, that they first have some credible Witnesses present, when they make their Subscriptions before the Bishop; and that they attest the Bishops Certificate; and that they get two Books of Articles; and that when they read the 39 Articles, they give one of those Books of Articles to some credible Parishioners to read with them, and then attest the Book, that they were present, and heard the Clerk read the said thirty nine Articles during the time of Common Prayer, and declare his unfeigned assent and consent to all the matters and things therein contained, by subscribing their names thereunto; and that the Clergyman keep safely the said Book of Articles with this attestation.

And I advise, that when he reads the Book of Common Prayer, which must (as above is said) be read Morning and Evening, in all things which

which is prescribed therein, within two months after induction; that he likewise make some intelligent Parishioners to read with him, and give them a Copy of the Declaration aforesaid, and at the foot of it take an attestation under their hands, of his reading the said Book of Common Prayer and Declaration, which may be done in this form.

First, in a fair legible hand write the Declaration aforesaid, then write under to this effect, Memorand. *That upon Sunday the day of* *in the year of our Lord*

A. B. Parson of D. in the County of D read Common Prayers in the Parish Church of D. aforesaid, both in the Forenoon and Afternoon of the same day, according to the Form and Order prescribed and directed by the Book, intituled, The Book of Common Prayer and Administration of the Sacraments, and other Rites and Ceremonies of the Church, according to the use of the Church of England together with the Psalter or Psalms of David, pointed as they are to be sung or said in Churches, the form or manner of making, ordaining and consecrating of Bishops, Priests and Deacons; and immediately after the reading the same, made a Declaration of his unfeigned assent and consent, to all the matters and things therein contained in the form and words above written: And then let the Witnesse hereunto subscribe the same Certificate; which the Clerk is to keep carefully with his Institution, Induction and Certificate, with the Book of Articles attested, as is before directed. And in these things I advise all Clergy-men to be very tender and careful.

There

13 El.cap.12.
What age a
Parson ought to
be of,

There was an Act made in the thirteenth year of Queen Elizabeth, That none should be admitted to any Benefice, unless he were three and twenty years of age, and a Deacon at least, and should subscribe the thirty nine Articles before he should be admitted; and that none should be admitted to preach or administer the Sacraments, unless such persons were 24 years of age at least: But this Law is in part altered by the before-mentioned new Statute of Uniformity; for now none can be admitted to any Living till he is a Priest in Holy Orders, which he cannot be by this Statute till he is 24 years of age.

Who may be ad-
mitted to a Be-
nefice of 30 l.
per annum in
the Kings Books.

And by the same Statute it is enacted, That none should be admitted to any Benefice with cure of Souls of the value of thirty pounds or upwards in the Kings Books, unless he be a Bachelor of Divinity at least, or a Preacher licensed by some Bishop, or one of the Universities of this Kingdom; and if not so qualified, his Institution to be void.

Otely versus
Shepheard, circa
13 Car.1. C.B.
m. Qua.Imp.

If one be instituted into a Benefice under the age of 23 years, whereby it is made void with- in the Statute of 13 Eliz. yet no lapse shall incur, because the presentment is not made void.

It may be a question, whether Parsons, Vicars, &c. are within the late Act for preventing Dangers which may happen from Popish Recusants, therefore it is a safe way to receive the Sacrament, take the Oaths, and make the Subscriptions prescribed by that Act; *cautela abundans non nocet.*

CHAP. VII.

The seventh Chapter shews the duty of the Parson, Vicar, &c. after Induction, and the former Ceremonies performed; and treats of Non-residence, and the penalties thereof, and for what reasons the same may be excused:

HE that has orderly, as aforesaid, obtained Parsons, &c. an Ecclesiastical preferment in the Church must be conformable. of England, must be conformable to the Govern- Stat. 1 Eliz. c. 2. ment and Orders thereof, and must not use any other publick Form of Prayer than what is prescribed by the Book of Common Prayer before-mentioned, neither must he administer the Sacraments of Baptism and the Lords Supper in any other manner or form, than what is therein and thereby directed and prescribed.

And if any Incumbent be resident upon his St. 14 Car. 2. c. 4. Living (as he ought to be) and keep a Curate, When, and how oft he must read the Common Prayers. he is bound by the Act of Uniformity once every month at least to read the Common Prayers of the Church, according as they are directed by the Book of Common Prayer, in his Parish Church in his own person, or he forfeits 5 l. for every time he fails therein. See the Statute how he is to be convicted, and the penalty to be levied.

And the Common Prayer by that Statute is to Before every be read before every Lecture; and it is not suf- Lecture. ficient to read a piece here, and a piece there,
 where

where the party pleases; but they must read the whole appointed for the day orderly, as it is appointed with all the Circumstances and Ceremonies of kneeling and standing, as is prescribed, otherwise it is no reading of Common Prayers within this Law; quod nota.

And note, That by the late Statute of Uniformity, the former Statutes of Uniformity and Penalties therein are extended to this Book of Common Prayer now lately established.

And by the Statute of 1 Eliz. It is enacted,
 Stat. 1 Eliz. c. 2. That, if any Minister, that ought or should sing or say Common Prayer, &c. refuse to use the same Common Prayers, or to administer the Sacraments, &c. in such order and form as they are mentioned and set forth in the Common Prayer Book, or shall wilfully or obstinately standing in the same, use any other Rite, Ceremony, Order, Form or Manner of celebrating the Lords Supper, or other open Prayers, or shall preach, declare, or speak any thing in derogation or depraving of the same Book, or any thing therein contained, &c. upon Conviction, the party guilty of any of these offences, forfeits the profits of all his Livings and Spiritual Promotions for a year, and is to suffer Imprisonment for six months without bail or mainprise; and upon a second Conviction for the like offence, he is to suffer imprisonment for a whole year, and be deprived ipso facto of all his Spiritual Promotions; and upon a third Conviction for the like offence shall be imprisoned during his life, and lose all his Spiritual Promotions, if he have any: And if such person have no Spiritual Promotions, then for the first offence he is to be imprisoned for a year, for the second during life without bail or mainprise.

The Penalty for
 using other
 Forms of Prayer,
 &c.

I have been the briefer in these matters upon the Statutes of Uniformity, because they are printed at large before the Book of Common Prayer, to which I refer the Reader for his fuller satisfaction; and they are so plain and full, that they need no Comment, but to advise all Clergy-men to read and observe them cautiously.

I shall only give the Reader this further caution, That if any Parson, Vicar, &c. shall maintain any Doctrine, contrary to the thirty nine Articles of Religion, it is cause of Deprivation; or if he administers the Sacraments in any other Form than is prescribed by the Book of Common Prayer, he forfeits 100 l. by a Statute made in the 13th year of Queen *Eliz.* And by the new Statute of Uniformity this Penalty is extended to such as do it contrary to the present Book of Common Prayer now used. 13 Eliz. c. 12.

The next duty incumbent upon the Parsons, Vicars, &c. is, that they be resident upon their Cures, a Duty incumbent upon every one, that hath the cure of Souls in the Church of Christ; for, as *Padre Paulo* in his most excellent History of the Council of *Trent* observes, that in the first 700 years after Christ, there was not any such thing known in the Western Church, that any man should have an Office or Title in the Church, and not do the duty; and many Canons and Decrees have been made against Non-residence: And in the Council of *Trent* it was held by much the greater and better number of the Prelates and Fathers in that Council, that Residence was *Jure Divino*, and undoubtedly had been so decreed, if the Pope had not used all his old Stratagems against it; but whilst the Pope had

Page 217. in the English Translation.

Non residence when it came into the Church.

The same Hist. p. 217. &c. 486. &c. 509: &c. 496: Residence Jure Divino.

had power to dispense with Residence, all the Canons and Decrees of that Church were of little greater effect than to fill his Coffers with money; for in this Kingdom, how many Bishopricks, Abbies, Priories, &c. were enjoyed (I mean the profits of them) by Forreigners, that never saw them, or took any care of their duties? I should be glad if it were much better now.

The exact Abridgment of Records, nu. 50.

The Commons of *England* often complained against Pluralities and Non-residence, and in the Parliament held 2 *H. 4.* the Commons prayed, That all such as procured from *Rome* (for in those days they came from *Rome*) any Bulls for Pluralities or Non-residence, should incur the pain of Provisoes, except the Chaplains of Archbishops and Bishops, and Scholars; and those that had any Bulls should cancel them.

Ibid. 8 H. 4. num. 113.

And in the Parliament held 8 *H. 4.* the Commons petitioned that the King might have a moiety of the Profits of all Benefices where the Incumbent was Non-resident.

Ibid. 9 H. 4. num. 70.

The like was prayed in the Parliament in 9 *H. 4.*

Ibid. 4 H. 6. num. 38.

In the Parliament 4 *H. 6.* it was prayed by the Commons, That all Parsons and Vicars, and others having Cures, and not being resident thereupon, should forfeit their Benefices, the one half to the King, and the other half to the Patron.

Ibid. 4 H. 6. num. 31.

In the Parliament held the same year, the Commons prayed, That for the Non-residence of the Incumbent, the Patron might present a new Clerk; and great reason in my Judgment, and very agreeable to the Rules of the Common Law, where a Temporal Officer loses his Office for Non-user: And I know no reason why
it

it should not be so in Spiritual Offices, where the Souls of a many poor People are neglected. But these had none of them the good fortune to be reduced into Laws, but I presume these complaints in Parliament so awakened the Pope and Clergy, that there was some Reformation; for I find no more complaints in Parliament concerning this matter, till the 21 H. 8. in which Parliament it was enacted;

That as well every Spiritual Person then being promoted to any Archdeaconry, Deanry or Dignity in any Monastery or Cathedral, or other Church Conventual, or Collegiate, or being beneficed with any Parsonage or Vicarage; as all and every Spiritual Person, which then after should be promoted to any of the said Dignities or Benefices with any Parsonage or Vicarage from the Feast of St. Michael then next following, should be personally resident and abiding, in, at, or upon his said Dignity, Prebend or Benefice, or one of them at the least; and that if any such person wilfully absented himself from his said Benefice, &c. by the space of a month at one time, or two months at several times in any one year to be accounted at several times, that such person so absenting himself should forfeit 10 l. for every such default, the one half to the King, the other half to the Informer, to be recovered, as is expressed in the Act. 21 H. 8. cap. 13.
Act against
Non-residence.

And by the same Act, there is a Proviso worth mentioning, though now out of date, to this effect:

That if any person should procure any Dispensation from Rome, or elsewhere, to be Non-resident, the party guilty should forfeit twenty pounds. By this and other Statutes mentioned

in this Book it is evident, that the Parliaments of England, even when the Pope was in full power, often made bold with his Holiness to correct his, and his Courts corruption.

Certainly this was an excellent Law, if there had been no more in it but the dispensing with such persons as by the same Law are qualified to have two Livings; and the persons capable to qualifie Chaplains to have Pluralities had not been grown so numerous, that there are but few of the best Livings but they are held by Pluralists, and they either by colour of attending their Lords, their Deanries or Prebends, find an excuse to be Non-resident, which has made this Law of little effect; nay, I doubt I may say, that we are now in a far worse condition than before the making of this Act; for Dispensations from *Rome* (as all other things there) were costly, came slowly, being far to fetch; that I presume there's ten Dispensations for Pluralities now, for one then; and few of those dispensed with were Non-residents upon both Livings, as now they be: Two great Parishes in many places being left to the care of two Boys that came but the other day from School, and perhaps fitter to be there still, whilst the Shepherd that takes the Fleece, either feasts it out in his Lords Family, or takes his ease upon a Prebend or Deanry.

The ends of this Law.

To do their Duties.

This good Law principally aimed at three ends or effects:

1. That every Clergy-man might attend his duty in reading the publick Prayers of the Church, administering the Sacraments, preaching, inspecting the behaviour of his Flock, and performing all sacred and divine Offices, like a good

and faithful Shepherd: And I do wonder with what Conscience any Clergy-man can expect his dues from his Parishioners, that does not perform his duty in the first place.

2. The second end of this good Law, is to *To avoid Dilapidations.* avoid Dilapidations in the buildings belonging to their Livings: For you shall seldom see a Non-resident, but he is also a Dilapidator; and 'tis no wonder that he that neglects the Flock, lets the Sheepfold go to ruin.

3. The third end of this good Law, was to *To maintain Hospitality.* maintain Hospitality: And I would wish every Clergy-man to remember, that the Poor have a share in the Tythes with him. *Stat. 15 R. 2. c. 6. & 4 H. 4. c. 12.*

Pope *Sylvester* in the beginning of the fourth Century, decreed, That the Revenues of the Church should be divided into four parts: *Quarum una cedat Pontifici ad sui sustentationem; Altera Presbyteris & Diaconis, & omni Clero: Tertia Templorum & Ecclesiarum reparationi; Quarta pauperibus & infirmis, & peregrinis.* *Can. 4.*

And by a Canon of our own made in the time of King *Alfred*, it is decreed, That the Tythes should be delivered to the Priest, who should divide them into three parts: *Unam partem ad Ecclesiæ reparationem; alteram pauperibus erogandam; tertiam vero ministris Dei qui Ecclesiam ibi curant.* *Can. 24. Lamb. 132.*

And by a Provincial Canon of our own, it is ordered, *Quod religiosi beneficia Ecclesiastica obtinentes, secundum hujusmodi beneficiorum facultates annis singulis pauperibus parochianis beneficiorum eorundem certam Eleemosynæ quantitatem, Ordinariorum ipsorum locorum moderandam arbitrio, per ipsos Episcopos distribuere compellantur, &c.* By all which it ap-

pears, that originally the Poor had a share in the Tythes.

And to this end the Statute enjoyns the Clergy-man to be resident in and upon his Living, that is, his Parsonage or Vicarage House, if he have any, and not at any other House in the Parish; but Imprisonment without fraud, or removing for health without fraud, or not having a House upon his Glebe, excuses his Residence for the time; for the words of the Statute are (*That he that wilfully absents himself*) So if any Parson, Vicar, &c. shall be in the Kings Service beyond Sea, or in any Pilgrimage, or shall without * fraud abide in any University

Co. 6. 21. b.
More 540. du-
bitatur.

* But by the
Stat. of 28 H. 8.
c. 13. this Law
is restrained to
such as are un-
der 40 years of
age, and do the
exercises of the
University.
Who may be
Non-residents.
25 H. 8. c. 16.
33 H. 8. c. 28.

21 H. 8. c. 13.

33 H. 8. c. 28.

within this Realm to study, or is a Chaplain qualified within this Statute, to have Plurality of Benefices, or the Chaplains of any of the Judges of the Kings Bench, or Common Pleas, Chancellor or chief Baron of the Exchequer, of the Kings Attorney and Solicitor, and the Chaplains of the Chancellor of the Dutchy of Lancaster, of the Augmentations, First-fruits, and Tenths; of the Master of the Wards, the Surveyor General, of the Treasurer of the Chamber, and Augmentations, and Groom of the Stool, whilst such Chaplains abide, and are attendant in the Housholds of their Masters; and the Master of the Rolls, the Dean of the Arches, and the Chancellor and Commissaries of Archbishops and Bishops, and the twelve Masters of the Chancery so long as they shall continue in their places, may be Non-resident: But the Chaplains of the Chancellor of the Dutchy, Augmentations, First-fruits, Master of the Wards, Surveyor General, Treasurer of the Chamber and Augmentations, and Groom of the Stool,

Stool, are to be resident twice in a year at least, 9 E. 2. c. 8. eight days at each time: And the King may give license to any of his own Chaplains to be Non-resident: And any Ecclesiastical Person to attend any Suit in the Chancery or Star-Chamber without fraud, may be Non-resident for so long time, &c.

There is another Proviso in this Statute that enables the King to give his Chaplains as many Livings as he pleases, and to dispense with their own Residence.

Master dies, &c. Co. 4. 119. a. Co. 6. 21.

But if a Chaplain be qualified in respect of his Service to have a Plurality, and his Lord or Master dye, be attaint of Treason, Felony, or removed from his place, it will not serve the Chaplains turn to be resident upon one of his Livings without the Kings special License with a non obstante.

And here I must not omit an ancient Prerogative of the Kings of *England*, practised in the height of Popery, that where any Clergyman were employed in the Kings Service, he might dispense with their Non-residence; and if the Spiritual Judges went about to censure or punish them by Ecclesiastical Censures for such Non-residence, the Kings of *England* have sent their Writs Mandatory, commanding them to surcease.

Register Or. 58. b. F.N.B. 44. g.

But Bishops and Archbishops are not within this Law, but not exempt from this duty; there being several Canons that require it: and Bishops may be compelled hereunto by Ecclesiastical Censures by their Superiours; and the King may compel them by seizing their Temporalities: A notable President whereof we have in the time of *H. 3.* when Popery was at high-

Concil. gener. Const. Can. 80. Concil. Sardi. Can. 15. Const. Othon. Quid ad venerabiles patres. Bishops residence requirable. 2 Inst. 625.

est, and the King not lookt upon as Head of the Church ; yet that King sent his Writ Mandatory to the Bilhop of Hereford to be attendant upon his Bishoprick, otherwise he would seize of all his Temporalties. Which Writ, as well for the rarity, as also for the Religious groundsupon which it was granted, will not be ungrateful to the Reader to see, and for whose satisfaction I shall give it him as I find it recorded by Sir Edward Coke, and wish there were no cause to make use of it in these days.

Rex Episcopo H. salutem, Pastores gregibus præponuntur, ut diei, noctisque vigilias exercendo, oves famelicas in fertilitatis pascua introducant : Errantes vero per verbum salutis, & virgam correctionis in unius ovilis conservare studeant indissolubilem unitatem : Sed sunt nonnulli qui hanc doctrinam dampnabiliter contemnentes, & sua ab aliis pecora distinguere nescientes, lac & lanam tollunt, qualiter dominicus grex alatur non curantes, temporalia rapiunt ; Et quis in parochia fame pereat, aut periclitetur in moribus, non attendunt ; qui non Pastores, sed Mercenarii potius dici promerentur : Hoc siquidem dum his diebus ad disponendum de regni nostri præsidis in partes Marchie nos transferremus in Ecclesia vestra, (dolenter referimus) nos invenisse, quam adeo invenimus pastoris solatio destitutam ut nedum Episcopum, sed nec officialem haberet, Vicarium aut Diaconum qui quicquam spiritualitatis exercere possit in eadem. Sed Ecclesia ipsa quæ olim deliciis affluere consuevit, & Canonicis qui ibidem nocturnis & diurnis officiis vacare, & opera charitatis exercere deberent, eam deserentibus & longe de gentibus in remotis, Stola Fucunditatis

tatis exuta cecidit in terram, viduitatis suæ de-
trimenta deplorans, nec est qui consoletur eam
ex omnibus curis ejus: Sane dum hæc vidimus,
& consideramus diligenter, pietatis aculeus,
viscera nostra commovit, & compassionis gladi-
us intima cordis nostri acrius vulneravit, ut tan-
tam Ecclesiæ matris nostræ injuriam ulterius
dissimulare non possimus, nec pertransire incor-
rectam. Quapropter vobis mandamus firmiter
injungentes, quatenus ad Ecclesiam vestram
prædictam, occasionibus quibuscunque postpositis,
cum ea qua poteritis celeritate vos transferri
curetis, commissum vobis in eadem cura pastora-
li officium personaliter Executor. &c. Alioqui
scire vos volumus pro constanti, quod si istuc fie-
ri non curaveritis, bona temporalia, & omnia
quæ ad baroniam ipsius Ecclesiæ pertinent, quæ
donatione constat eidem fuisse collata, & quæ
hactenus collegi & salvo custodiri præcipimus in
commodum & utilitatem ipsius Ecclesiæ con-
vertenda, cessante jam causa in manu nostra
totaliter capiemus, nec ulterius sustinebimus,
quod temporalia metat, qui spiritualia ad quæ
ex officii sui debito tenetur, irreverenter subtra-
here non formidat, aut quod emolumenta perci-
piat, qui incumbencia ejusdem onera subire re-
cusat, &c. T. &c.

This Writ was sent by H. 3. to Peter de E-
gueblanke a Savoyard, then Bishop of Hereford,
who, as the Histories of those times relate, had
never a good, but many bad qualities, that con-
stantly attend men that are negligent of their
duties to God and Man in this kind, how little
care soever he took of duty, you hear, *lac &*
lanam sustulit, temporalia rapuit, by which
means he was grown intolerable rich; and mark

what came of his wealth, the rebellious Barons seized on him in his Cathedral Church at Hereford, and took all his Goods and Treasure, and divided it amongst their Souldiers: Even so may it fare with all such Bishops.

Now my hand's in, I will beg the Readers patience to inform him what Pope Damasus, one of the better sort of Popes, said in an Epistle of his to such Bishops; and it was thus:

Primum quod curam sibi commissam negligent, cum Dominus dicat; Bonus Pastor animam suam ponit pro ovibus suis, mercenarius autem videt lupum venientem, & demittit oves, & fugit, &c. Secundo, illi Episcopi qui talia presumunt, videntur mihi (ait) esse meretricibus similes, quæ statim ut pariunt, infantes suos aliis nutricibus tradunt educandos, ut suam citius libidinem explere valeant. Sic & isti infantes suos, id est, populos sibi commissos aliis educandos tradunt, ut suas libidines expleant, id est, pro suo libitu secularibus Curis inbient, & quod unicuique visum fuerit, liberius agunt, Pro talibus enim animæ negliguntur, oves pereunt, morbi crescunt, hæreses & schismata prodeunt, Ecclesiæ destruuntur, sacerdotes vitiantur, & reliqua mala proveniunt. Non taliter Dominus docuit, nec Apostoli instituerunt, sed ipsi qui Curam suscipiunt, ipsi peragant & ipsi proprios manipulos Domino representent. Nam ipse ovem perditam diligenter quæsit, ipse invenit, ipse propriis humeris reportavit, nosque id ipsum facere perdociuit. Si ipse pro ovibus tantam curam habuit, quid nos miseri dicturi sumus, qui etiam pro ovibus nostris commissis Curam impendere negligimus, & aliis eas educandas tradidimus? Corriganur hac (fratres) necesse est, quia,

qui

qui plus laborat, majorem mercedem accipiet.

And now I have done with Non-residence, one of the Pests of the Church: I will in the next place shew what Dilapidations are; and the several ways the same are punishable, this being often the effect and fruit of Non-residence.

CHAP. VIII.

Shews what Dilapidation is, and in what manner punishable, and what remedies the Successor hath.

A Dilapidation is the pulling down or destroying in any manner any of the Houses ^{Dilapidations what?} or Buildings belonging to a Spiritual Living, or the Chancel, or suffering them to run into ruin or decay; or wasting and destroying the Woods of the Church, or committing, or suffering any wilful wast in or upon the inheritance of the Church. And certainly there can be nothing worse becoming the dignity of a Clergyman than Non-residence and Dilapidations, which for the most part go hand in hand. I wish our Church had not too much reason to complain of both. There have been divers Canons of the Church made against this crime, as I may justly call it; but as in others, so in this, I shall confine my self to our own Provincials: And I find in a Provincial Council or Synod held under Edmund Archbishop of Canterbury, in the year of our Lord 1234. which was, as I take it, about the 18th year of H. 3. a Canon to this effect:

Si

Canon against
Dilapidation.
Lindw. Chap.
Si Rector alicu-
jus Ecclesiæ.
Vide Canon O-
thobon de domi-
bus Ecclesiæ
reficiendis in the
Appendix to the
twelfth Chapter
of this Book, hic
in fine.

Co. 5. 6, 7.
Cro. Eliz. 559.
Not to repair
the Church, but
Chancel.

2 Inst. 653.

A Canon for re-
lief against
Dilapidations.

Verb. Ecclesiasti-
cis.

Si Rector alicujus Ecclesiæ decedens domos Ecclesiæ deliquerit dirutas, de bonis suis Ecclesiasticis tanta portio deducatur, quæ sufficiat ad reparandam hæc, & alios defectus Ecclesiæ sup- plendos. Item statuimus circa illos Vicarios, qui solvendo modicam pensionem omnes Ecclesiæ habent proventus: nam cum ad præmissa teneatur talis portio deducta, satis poterit & debet inter debita computari; Semper tamen rationabilis consideratio sit habenda ad facultates Ecclesiæ, cum portio fuit habenda.

Now if it be demanded what Houses are meant within this Canon, the Gloss tells you, *ut putamus Rectoria, Vicariæ & alia Edificia quæcunque, quorum Edificatio sive reparatio spectat ad ipsum Rectorem.*

By the Letter of this Canon the Rector is to repair the whole Church; but by the Custom of England the Owners of the Houses and Lands in every Parish are bound to repair the Body of the Church, and the Rector only the Chancel; unless by particular Custom it hath been otherwise: And in this point the Common Law is kinder to the Parsons, Vicars, &c. than the Canon Law: and the Common Law being here to be preferred, annuls that part of the Canon: And the Gloss upon the words *defectus Ecclesiæ*, adds, *Hæc littera potest intelligi de defectibus Ecclesiæ, quæ pertinent ad curatum ipsius Ecclesiæ in solidum sic, quod non pertineant ad alios, ut puta, in Cancellâ, & aliis ad onus Rectoris de jure vel consuetudine spectantibus.*

But this Canon seems only to affect the Ecclesiastical Goods: And what those might be, deserves the Judgment of the Gloss, which tells you they are such as *jure & nomine Ecclesiæ ob-*
venien-

venientibus ; talia enim bona sunt per viam tacitæ hypothecæ ad reparationem huiusmodi faciendum obligata.

And if the Goods of the Church shall not suffice, then the Gloss tell us, *Si Rector bona Ecclesiastica expenderit in meliorationem patrimonij sui, vel si propter nimiam diligentiam propriorum negotiorum neglexerit negotia Ecclesiæ procurare, & sic Ecclesia sit dampnum passa, tenetur satisfacere de bonis suis patronalibus, si quæ habuerit.* But there has been made a further question, Whether satisfaction for Dilapidations should be preferred in payment before Debts and Legacies: And as the Common Law prefers the payment of Debts before Damage for Dilapidations ; so the Ecclesiastical Law prefers the damage for Dilapidations before the payment of Legacies : To which hear what the Gloss says ; *Si Legatarij tanquam Creditores petant legata sibi relicta, & Prælatus petat sumptus reparationis Edificiorum Ecclesiæ; talis Prælatus debet præferri cæteris Legatariis:* and gives this reason, *Nam Legata solvi non debent nisi prius deducto ære alieno.* So that the Ecclesiastical Law agrees with the Common Law in this, that Debts are to be preferred before Legacies.

The next thing considerable is, What repairs are requirable in this case, which is answered by the Gloss : *Et intellige hanc reparationem Verbo reparand. fieri debere secundum exigent' & qualitatem rei hæc. reparandæ, &c.*

Thus far I have followed the Canon and Gloss thereupon : Now in the next place we will shew you what we have relating to this matter amongst the Laws and Statutes of this Realm.

And

Wast by Bishops.
Co. 11. 49. a.

Cause of Depri-
vation.

M. 23. Ei inter
adjudicat co-
ram Rege.

Huntsf. 83.

* Or in the
Kings Bench,
Bulstrode 3. 158.
More 917.

Rot. Pat. 14 H.
3. m. 8.

Bulst. 2. 279.

* Hollingsh.

181. b. 30.

† 20 H. 6. 46. a.

3 Inst. 204.

2 H. 4. 3. b.

Co. 11. 94. b.

29 E. 3. 16. a.

9 E. 4. 34. a.

* Causa 10.

q. 2. si quis Casus, *Quæsitum fuit quam pœnam debeat pati Episcopus quum alienat rem Ecclesiæ nulla necessitate cogente.* The answer was, *Res ipsas Ecclesiæ proprie restaurare cogatur & in Judicio Episcoporum dejiciatur auditus & convictus, & tanquam furti aut latrocinij reus suo privetur honore.* Causa 12. q. 2. Apostolicos.

And first, I find that at a Parliament at *Carlisle*, in the 35th year of *Edward the First*, a great complaint was made against *Anthony*, then Bishop of *Durham*, for wast and destruction of the Woods belonging to his Bishoprick, by gift, sale, and otherwise, and for erecting Forges of Iron and Lead, and making Charcoals of the Wood to be spent in their Iron and Lead-works, to the disinherittance and impoverishing of his Church, and in prejudice of the King and his Crown, and of the Chapter of *Durham*. To which the answer is, *Inhibetur per breve de Cancellaria Episcopo & Ministris suis, ne faciant vastum de contentis in petitione.*

By which it appears, That if a Bishop, or any other Clergy-man, do wast upon the Woods or Lands of his Church, that a Prohibition may be sued in * *Chancery* to prohibit him: For *Ecclesia est infra ætatem & in custodia Domini Regis, qui tenetur jura & hæreditates ejusdem manu tenere & defendere.*

And the Archbishop of *Dublin* was fined 300 Marks for the disafforesting a Forest belonging to his Archbishoprick.

* And *William*, Abbot of *Westminster*, in the 15th year of King *John*, Anno 1213. was deprived, because he had wasted the Revenue of his Church or Abby.

And it seems by several Books of the † *Common Law*, * and by the Canons of the Church

like-

likewise, that in case a Bishop, Abbot, Prior, &c. waſt the Lands, Woods, or Houſes of his Church, he may be depoſed or deprived by his Superior: ſo that it appears clearly, that the fault in this caſe lies heavy upon thoſe that have the Viſitation and Superiority, that do not take care againſt the waſting and deſtruction of the Building, Houſes, Woods, &c. of the Church; and that the Succeſſors ſhould not be put to ſeek remedy againſt Executors and Adminiſtrators, who are too active in finding ſhifts to avoid their actions, to avoid which there is a good Law made in the thirteenth year of Queen Elizabeth to this effect:

That if any Parſon, Vicar, &c. ſhall make any conveyance of his goods to defraud his Succeſſor, of his remedy, the like Suit is given in the Spiritual Court againſt the Grantee, as the Succeſſor ſhould have had againſt the Executors or Adminiſtrators of the Predeceſſors.

Statute againſt fraudulent Conveyances. Stat. 13 Eliz. c. 20

But this Act gives no remedy at Common Law, becauſe by another Act made at the ſame Parliament, *all ſuch Grants to defraud any perſon or perſons of their juſt actions are made void.*

Stat. 13 Eliz. c. 5.

So that the Plaintiff has equal remedy in both caſes: Suits for Dilapidations are moſt properly and naturally to be ſued in the Spiritual Courts; and if any Prohibition ſhould be granted, the ſame ought to be ſuperſeded by a Conſultation; but this is intended where the Suit is grounded upon the Canon Law.

Fitzh. N.B. 51. f.

But the Succeſſor may upon the Cuſtom of England have a ſpecial Action upon the caſe againſt the Dilapidator, his Executors or Adminiſtrators, whereof there are multitudes of Preſidents

Action upon the Caſe at Law for Dilapidations. T. 8 H. 7. R. 69. B. R.

T. 18 H. 7. ro.
69. C.B.
P. 12 & 13 H. 8.
rot. 126. C.B.
H. 15 H. 8. rot.
306. C.B. M. 12
H. 8. ro. 730. C.
B. H. 15 Jac. ro.
474. &c.

The Custom upon
which the Acti-
on is grounded.

fidents even in the time of Popery, whereof the Reader has a taste in the Margin: By all which it appears, that by the Custom of England, which is the Common Law; *Omnes & singuli Præbendarij, Rectores, Vicarij Regni Angliæ pro tempore existentes, omnes & singulas domos & edificia Præbendarum, Rectoriarum & Vicariarum suarum reparare & sustentare, & ea Successoribus suis reparata & sustentata dimittere teneantur. Et si hujusmodi Præbendarij, Rectores & Vicarij Domus & Edificia hujusmodi Successoribus suis sic, ut præmittatur, reparata & sustentata non demiserunt & deliquerunt; sed ea irreparata & dilapidata permiserunt, Executores sive Administratores bonorum & catallorum talium Præbendariorum, Rectorum & Vicariorum post eorum mortem de bonis & catallis decedentium Successoribus talium Præbendariorum, Rectorum & Vicariorum, tantam pecuniæ summam quantam pro necessaria reparatione & edificatione hujusmodi Domorum & Edificiorum expendi aut solvi sufficiet, satisfacere teneantur.*

And upon this Custom, Actions of the Case have been frequently brought, both anciently, and of later times, and damages recovered.

Stat. 14 Eliz. c. 11. And note, That by a Statute made in the fourteenth year of Queen Elizabeth, it is expressly enacted, *That all the monies and damages that shall be recovered for Dilapidations, are to be expended and laid out, in, and about the repair of the Houses, &c. dilapidated, wherein the Visitors of those Churches ought to take care.*

35 E. 1. It will not be altogether improper to conclude this Chapter with the Statute of 35 E. 1. intitled;

titled, *Ne Rectores prosternant arbores in Cæmeterio*; whereby it is enacted, or rather the Common Law declared to be in these words.

We do prohibit the Parsons of the Church that they do not presume to fell them (viz. the Trees in the Church-yard) down unadvisedly, but when the Chancel of the Church wants necessary Reparations: Neither shall they be converted to any other use, unless the Body of the Church do want repair; in which case the Parsons of their Charity shall do well to relieve the Parishioners with bestowing upon them the same Trees, which we will not command to be done, but we will commend it when it is done.

Against cutting the Trees in the Church-yard.

By this Law it appears, that the Church-yard and the Soil thereof is in the Parson, and by consequence the Trees are in the Parson or Rector, that grow therein. But because the Trees that grow there are for the most part planted there for the shelter and ornament of the Church from tempests and storms; therefore the Parliament has granted a Prohibition in this case against the Rectors and Parsons of Churches, that they should not cut down these Trees for any other use, but the necessary repairs of the Church and Chancel, which in truth was no more than what the Common Law enjoined: For if the Rector had gone about to have cut them down for any other use, the Patron might have had a Prohibition; but now I conceive the Rector or Impropiator, that cuts down any Trees growing in the Church-yard for any other cause than for the repair of the Church or Chancel, may be indicted and fined upon this Statute at the Common Law; for whatsoever

3 Inst. 205.

ever may be prohibited before it is done, may be punished after it is done.

Cap. Archidiaconi & infra.

If the Bishops and Archdeacons in their Visitations would take care, these Dilapidations might easily be avoided, which are a great dishonour to the Clergy, and cannot be pleasing to God Almighty or good men: And the Canon enjoyns the Archdeacons and other Officials, *Ut in visitationibus Ecclesiarum faciendis diligentem exhibeant considerationem ad fabricam Ecclesiæ & maxime cancelli, si forte indigeant reparatione, & si quos invenerint defectus hujusmodi, certum sub pena præfigant terminum infra quem emendentur vel suppleantur, &c.*

CHAP. IX.

The ninth Chapter shews for what Causes a Parson, Vicar, &c. may be deprived by any Statute Law; and what matters are allowed for good causes of Deprivation at the Common Law.

Deprivation and Deposition. quid.

Where determinable.

DEprivation or Deposition is, where a man by any Statute Law, or by any Judicial Sentence Ecclesiastical, that hath proper Jurisdiction, is made incapable to hold or enjoy his Parsonage, Vicarage, or other Spiritual Promotion or dignity: And the causes of such Deprivation or Deposition are properly and naturally determinable by the Ecclesiastical Laws of this Realm. But because generally there are Estates of

of Freehold dependant upon these Promotions and Dignities, and annexed to them inseparably, which rest at the sole determination of the Common Law; the Courts of Common Law do sometimes inspect and regulate the proceedings of the Ecclesiastical Courts; and where they proceed against the Rules of Common Law, they frequently prohibit them: I have therefore thought fit to shew what causes of Deprivation or Deposition have been allowed and approved of by the Judges and Courts of the Common Law, or by any of the Statutes of this Realm. But there are many more Causes of Deprivation by the Canons and Laws Ecclesiastical, which being out of my profession, I shall not presume to discourse of.

1. If a Parson, Vicar, &c. be a common Drunkard, it is a just Cause to deprive him of his Church preferment.

Can. Apost. 42.
Mortimer vers.
Parker, 10 Jac.

2. The Clerk that obtains any preferment in the Church by any Simoniackal Contract or Agreement may be deprived by his Ordinary, &c. as it appears at large in the fifth Chapter here before upon that Subject.

*Simony cause of
Deprivation.*

3. That if any Parson, &c. shall refuse to use the Book of Common Prayer or administer the Sacraments in the order there prescribed, or shall wilfully and obstinately, standing in the same, use any other Rite or Ceremony, Order, Form or Manner of celebrating the Lord's Supper, or other open Prayers, or shall preach, declare or speak any thing in derogation thereof, or depraving the same, or any thing therein contained, and having formerly been convicted for the like offence, shall upon his second conviction be deprived ipso facto.

1 El c. 2. Stat.
14 Car. 2. c. 4.
To use other
Forms of Pray-
er, the third of
seuce.

St. 14 Car. 2. c. 4.
Neglecting to
read Prayers
within two
months after
Induction.

4. If any Parson, Vicar, &c. shall not within two months next after Induction upon some Lords day openly, publickly and solemnly read the Morning and Evening Prayers appointed to be read the same day, according to the Book of Common Prayer, and after such reading, shall not openly and publickly, before the Congregation there assembled, declare his unfeigned assent and consent to the use of all the things therein contained, in such manner as is directed before here in the seventh Chapter; and if there be any lawful Impediment, then if he do not do the same within one month after the Impediment removed; such Parson, Vicar, &c. shall be deprived ipso facto.

13 Eliz. c. 12.
To maintain a-
ny Doctrine a-
gainst the 39
Articles of
Religion.

5 R. 2. tit. Trial
54.

Miscreants, Infidels, Schismatics and Heretics deprived, f. 3.

* A Misbeliever.
† An Atheist,
&c.

38 E. 3. 2. b.
Dy. 8. & p. 254.
Co. 5. 58. a.

Dy. 293. p. 1, 2.
Slave, Villain,
illiterate and
criminous per-
son may be de-
prived.

* And so is the
54. Canon of the
Apostle's ex-
press.

Allen versus
Nash. P. 13
Car. 1 B.R.

5. If any Parson, which shall have any Ecclesiastical preferment, shall advisedly maintain or affirm directly any Doctrine contrary or repugnant to the 39 Articles of Religion, and being convented before the Bishop of the Diocese or Ordinary, or before the high Commissioners, shall persist therein, and not revoke his Error, or after such Revocation shall eftsoon affirm such untrue Doctrine, he may be deprived.

6. If any person shall obtain a preferment in the Church, which is a * Miscreant, † Infidel, Schismatick or Heretick, he may be deprived.

7. So if one be made a Parson, Vicar, &c. that is not of free Condition, but a Villain, or that is illiterate and not able to perform his duty, or that is guilty of any heinous Crime, as Murther, Manslaughter, Perjury, Forgery, or that is mere Laicus, and not in holy Orders, he may be deprived.

8. * A Parson, Vicar, &c. may be deprived for being disobedient and incorrigible to their Ordinary, &c.

9. And

9. And it was resolved by all the Judges of Cro. Jac. 37.
England, 2 Jac. That Non-conformity was a Non-conformity.
 good Cause of Deprivation; and it was declared Quod nota.
 by them all, that in case any Canons were made
 by the Clergy for the good Government of
 the Church, and approved and confirmed by
 the King (as they ought) that the obstinate dis-
 obeying of them was a just cause of Deprivation.

10. If any Parson, Vicar, &c. have one Be- 11 H.4.37.
 nefice with cure of Souls, and take another in- Taking a second
 compatible without a Faculty and Dispensation, Benefice.
 it is a just Cause of Deprivation.

11. In the time of Popery it was cause of Dyer 133. p.1.
 Deprivation for a Priest to marry, but not to Priest to marry
 have two or three Concubines, as they called was cause of
 them: But more of this hereafter. Deprivation.

12. Dilapidating the Church and Buildings, 3 Inst. 204.
 destroying the Woods, or alienating the Lands Co. 11. 98. b.
 belonging to the Church by any Bishop, Abbot, 2 H.4.3. 9 E.4.
 Prior, Parson, Vicar, &c. have been held and ad- 34. 20 H.6. 36.
 judged just causes of Deprivation; & it were very 29 E.3. 16. 17.
 fit the Canons in this case were put in execution. q.4. Quicunque.

There may be a question started, what shall
 be intended by the words, *Deprived ipso facto*; Deprivation
 whether by those words the Church shall im- ipso facto.
 mediately become void by the fact done, or not
 till Conviction or Sentence declaratory. The
 words *ipso facto* are of late time crept into Acts
 of Parliament; as that for striking with a Wea-
 pon in a Church-yard, the party shall *ipso facto*
 be excommunicate: And in that case it is made
 a *Quære* in *Dyer*. But in *Green's Case* it is re-
 solved, That the Church in this Case shall be Dy. 275. b. p. 48.
 void without any Sentence declaratory, and Quære.
 that Avoidances by Acts of Parliament Co. 6. 29. b.
 need no Sentence Declaratory. But in Cap. Quia in
 that continentie
 that verb. ipso facto.

that Case by the Canonists *requiritur Sententia* Rolls 2.282.f.5. *declaratoria*. And note, that after Induction the Spiritual Court cannot deprive for any Error in his Institution. So if a Clerk commits Homicide, and hath his Clergy, he shall not afterwards be deprived for this offence. And a man may be deprived by reason of Degradation.

I must confess, in this Chapter I may seem to transgress upon the Canonists and Civilians, as well as in some other, but I have gone no further upon this Subject than what I have met with in our own Books; and I must agree that the Ecclesiastical Courts have the sole Jurisdiction in all causes of Deprivation, Depositions, Resignations, &c. And yet the Judges of the Common Law have power to correct their proceedings, if they shall proceed against the Rules of the Common Law, which is the reason we meet with these things in our Books, and it may be some advantage to the *Civilians* to know how far the Common Law approves of their proceedings: There is by the Canon Law divers other causes of Deprivation, but it is out of my Province, and would be too long for this Discourse to reckon them all up. And having said what I have to say upon this Subject, I shall proceed next to shew, what Leases Parsons, Vicars, and other Ecclesiasticks may make at this day of the Glebes, Tythes, Farms, &c. and within the danger of what Statutes they may fall.

CHAP. X.

The tenth Chapter shews, what Leases Parsons, Vicars and other Ecclesiastical Persons may make of their Glebe, Tythes, Farms, &c. and what Farms they may take, and within the danger of what Statutes they may fall.

HAVING undertaken this Work chiefly in favour of the Parsons and Vicars, I designed to have meddled with no other Orders of the Church but those only; but having in many other things been enforced to entermingle the concerns of other Orders with those of the Parsons and Vicars, I shall beg the Readers pardon, that in this Chapter, where I am to treat of the Leases which may be made by Parsons and Vicars, I likewise take in all other Orders of the Church with the Colledges; the Learning concerning Leases being of use, and necessary for all people to know, and which I shall in this Chapter put into as good a method as the subject matter will permit.

*What Leases
Clergy-men
may make.*

And because the Learning of these Leases will depend upon several Statutes, it will not be amiss first to examine what Leases or Alienations the several persons we have to do with in this Chapter, might have made at Common Law before the Statutes, and then to consider where, or in what manner, the several Statutes have enlarged, abridged, or restrained their power at Common Law.

*At Common
Law.*

1 Inst. 45. 2.

*The enabling
Act of 32 H. 8.
cap. 28.*

And first, at the Common Law no Bishop, Abbot, Prior, Dean, Prebend, or other single Corporation, could make any Alienation or Lease to bind their Successors without the Confirmation of their Chapter, Covent, &c.

The first Statute that made any alteration in these Cases, was the Statute of 32 H. 8. which is commonly called the enabling Statute, where- by it is enacted,

That all Leases then after to be made of any Manors, Lands, Tenements or Hereditaments, by writing under hand and seal for term of years, or for term of life, by any Parson or Parsons of the full age of 21 years, having any estate of Inheritance either in Fee-simple or Fee-tail, in their own rights, or in the right of their Churches, &c. shall be good and effectual in the Law against the Lessors, their Wives, Heirs and Successors.

Provided that that Act shall not extend to any Lease of any Manors, &c. where any old Lease should be in being, unless the same expire, be surrendered or ended within one year after the making of such new Lease, nor shall extend to any Grant to be made of any Reversion of any Manors, &c. nor to any Lease of any Manors, &c. which have not most commonly been letten to Farm, or occupied by the Farmers thereof, by the space of twenty years next before such Lease thereof made, nor to any Lease to be made without impeachment of waste, or to any Lease to be made above the number of three Lives, or 21 years at the most, from the day of the making thereof; and that upon the making of every such Lease there be reserved yearly, during the said Lease, due and payable to the said Lessors, their Heirs

Heirs and Successors, to whom the Reversion shall appertain, &c. so much yearly Farm or Rent, or more, as hath most accustomedly been yielded and paid for the said Manors, &c. so to be letten within twenty years next before the Lease thereof made, &c.

Provided this Act should not extend to give any liberty or power to any Parson, Vicar, &c. to make any Lease or Grant of any of their Messuages, Lands, Tythes, &c. or in any other manner than they should or might have done before the making of the said Act.

So now, where before the making of this Act no Archbishop, Bishop, Archdeacon, Dean or Prebend, could have made any Lease to have bound his Successors without the confirmation and consent of their Chapters, &c. as aforesaid: Now by this Act they are enabled to make Leases for three Lives, or one and twenty years, without any confirmation at all with these qualifications: *What qualities such Leases must have.*

1. Such Lease must be made by writing indented, and not by parol or deed poll. *Must be in writing indented.*

2. It must be made to begin from the making, or day of the making of such Lease. *Must begin from the making, or day of making.*

3. If there be any old Lease in being at the time of the making of such Lease, it must expire, be surrendred or ended within a year after the making of such new Lease, and such surrender must be absolute, and not upon condition: *Old Lease must expire within a year. Co. 5. 2 b.*

4. There must not be a double Lease in being at one and the same time, the one for years, and the other for Lives. *Must not be a double Lease.*

5. Such Lease must be of Lands manurable or corporeal, which are necessary to be letten, *Of what things such Lease may be.*

Co. 5. 3. a.
More 778.
Talentine ver.
Denton.
H. 2. Jac. B. R.
Of Lands usu-
ally letten.

and out of which a Rent may be reserved, and not of things that lye meerly in Grant; as Fairs, Markets, Tythes, Tolls, Franchises, Advowsons, &c.

Co. 6. 37. b.

*The accustomed
Rent must be
reserved.*

6. Such Lease must be of Lands, &c. which have most commonly been letten to Farm; or occupied by the Farmers thereof for the more part of twenty years before the making of such Lease: So if they have been so let for eleven years within twenty years next before the making of the new Lease, it suffices: And a letting to Farm by Copy of Court-Roll, is a sufficient letting to Farm within this Statute, to enable the making of such new Lease.

Co. 6. 37. b.

Ibid.

Co. 5. 6. a.

Co. 5. 5. b.

Vide Co. 8. 70.
b. &c.

*What Reserva-
tions are good.*

Co. 5. 37. b.

7. There must be reserved upon every such Lease, and payable during the continuance thereof to the Lessor, his Successors, &c. so much Farm or Rent as hath most accustomedly been yielded and paid for the Land so demised within 20 years next before such Lease made: So that it sufficeth, if the yearly Rent or Farm be reserved, though Heriots and other casual Services be omitted; so if a greater Rent than formerly be reserved, it sufficeth. But if the Lessor reserve a less Rent than the ancient, during his life, and after the full Rent, yet it is naught, because it must be reserved during the whole term: So if Lands usually letten be demised with any other Lands, &c. though a Rent be reserved that exceeds the value of those Lands and the old Rent; yet such Lease is not good against the Successor within this Law. But if the Rent were formerly reserved to be paid at four several days, and by the new Lease be reserved to be paid all at one, so the whole Rent be reserved yearly, it is well enough.

If

If a Bishop, &c. have two distinct Manors that have aciently been demised together, and one entire Rent reserved for both Manors, and these being out of Lease the Bishop, &c. may demise them severally, reserving several Rents amounting to the whole ratably; and these have been adjudged lately in the *Common Pleas* to be good, and affirmed in Error in the *Kings Bench*; and by the same reason, if a Termor for life should Lease part for years, and then surrender and accept a new Lease, rendring the ancient Rent, it would be a good Lease, *tamen inde quere*, for of that part leased by the Termor, there would be two Leases on foot together; but if the new Lease were only of the Lands not demised by the Termor, then it seems good.

Trin. 26 Car. 2.
C.B. Thredneed-
ale vers. Linam.

H. 27 Car. 2. in
B.R. This Case
is put in the
modern Rep.
p. 203. but im-
perfectly re-
ported, *ideo*
quare.

8. Lastly, such Lease must not be without impeachment of wast, and therefore a Lease to one for life, remainder to another for life, remainder to a third for life is not good against the Successor, though but for three Lives, because the remainders make the present Tenants punishable for wast for the time.

*Such Lease must
not be without
impeachment of
wast.*

But Parsons and Vicars being excepted in this enabling Law are left as they were at the Common Law; so that they could make no Lease to bind the Successor without the confirmation of the Bishop and Patron, till the Statute of 13 Eliz. which we shall speak of hereafter.

*Parsons and
Vicars excepted.*

But this Act, as appears by what hath been said, conferred a new power upon single Corporations; but did not in any thing restrain their ancient power in making long Leases and Ali- nations of their very Scites, Demesnes, &c. with confirmations as aforesaid, which was a great pre-

prejudice to the Church in general, a means of Dilapidations, and a great hindrance of hospitality : and therefore,

1 Eliz. c. 19.
More 107.
Bishops re-
strained.

In the first year of Queen Elizabeth it was enacted, That all Gifts, Grants, Feoffments, Fines, and other Conveyances and Estates from the first day of that present Parliament to be had, made, done or suffered by any Archbishop or Bishop of any Honours, Castles, Manors, Lands, Tenements, or other Hereditaments, being part of the possessions of his Archbishoprick or Bishoprick, or united, appertaining or belonging to any the same Archbishopricks or Bishopricks, to any person or persons, Bodies Politick or Incorporate (other than the Queens Majesty, her Heirs and Successors) whereby any Estate or Estates should or might pass from the said Archbishops or Bishops, or any of them, other than for the term of 21 years, or three Lives, from any such time as any such Lease, Grant or Assurance shall begin, and whereupon the old accustomed yearly Rent or more shall be reserved and payable yearly during the said term of 21 years, or three Lives, shall be utterly void and of none effect to all intents, constructions and purposes, any law, custom, or usage to the contrary thereof in any wise notwithstanding.

1 Jacobi c. 3.

*Leases in other
Forms not void,
but avoidable.*

Smalwood and
Sale ver. le E-
vesq; Lich. & a-
lios. P. 31 El. ro.
21. 65 Co. 3. 59.
1 Inst. 45. 2.
Cro. Jac. 95.

Note, the exception, which gives, or rather reserves the power to grant, &c. to the Queen, &c. was made void by a Statute made 1 Jac.

And note also, that though this Statute enacts, That all Leases made in any other form shall be void and of none effect to all intents and purposes; yet it has been adjudged, that it is only to be intended as against the Successors, and that Leases made in other forms shall be good notwithstanding.

withstanding against the party himself that makes them, and may be affirmed by the Successor by the receipt of the Rent reserved thereupon.

And note, this is a private Act of Parliament, that must in all cases be pleaded, and cannot be given in Evidence.

1 Eliz. A private Act.
Co. 4. 76.
Co. 5. 2. b. 2.
Cro. El. 874.
More 253.

And note also, that though this Statute do not restrain demise of any Lands not formerly demised, yet it does it by implication; for the accustomable Rent must be reserved, and unless accustomable let, there cannot be an accustomable Rent; and Leases within this Statute must have all the restrictions in that of 32 H. 8. before mentioned.

And it must be of things manurable, as hath been said, out of which a Rent may be reserved. But some are of Opinion that Tythes or things not manurable may be demised for twenty one years, because an Action of Debt will lye upon the Contract: And so it was adjudged, as a learned Serjeant at Law informed me, in the case of the Precentor of *Pauls* about 17 Jac. and that the Successor shall have an Action of Debt upon this Contract, and is good within the Statute of 32 H. 1. cap. 28. and I have seen a Report of a Case in the 20 Jac. in the *Common Pleas*, that it was so adjudged; and see *Leys Rep.* 76: That *Yelverton, Williams*, and *Tanfield* were of the same opinion that it was good for years.

Of what things such Leases may be made.
Co. 5. 3. a.
More 778.
Sir Timothy Tourneur, Serjeant le Roy.
See the Case, Palmer 104.

Upon this Statute, and the former, it has been held, That Archbishops and Bishops may with confirmation of the Dean and Chapter make concurrent Leases, that is, notwithstanding there be a Lease in being for twenty one years, they may

1 Inst. 45. 8.:
Concurrent Leases.

More 66.

1 Inst. 45. a.

1 Inst 45. a.

More 253.

Cro. Eliz. 141.

13 Eliz. cap. 10.
The restrictive
Law against
Leases of Deans,
Prebends, &c.

may make a new Lease of the same Lands to another for twenty one years from the making thereof; and this being confirmed as aforesaid, shall bind the Successor, the other things being observed in it: But Sir *Edward Coke* excepts the concurrent Leases, as to those other things.

And Sir *Edward Coke* is of opinion, that like concurrent Leases may be made by Deans, Prebends, &c. with confirmation; But some learned men are not satisfied concerning concurrent Leases, because by these concurrent Leases the Successor loses his remedy for his Rent by distress during the former term, and the Tenant may be insolvent as to an Action of Debt: But a concurrent Lease for Lives is not good, because upon such Lease the Lessor would have no remedy for his Rent.

The next restrictive Law is that of 13 *Elizabeth*. whereby it is enacted, *That from thenceforth all Leases, Gifts, Grants, Feoffments, Conveyances or Estates to be made, had, done or suffered by the Masters and Fellows of any Colledge, Dean and Chapter of any Cathedral or Collegiate Church, Master or Guardian of any Hospital, Parson, Vicar, or any other having a Spiritual or Ecclesiastical Living, or any Houses, Lands, Tythes, Tenements or other Hereditaments, being any part of the Possessions of any such Colledge, &c. or any wise appertaining or belonging to the same, or any of them, to any person or persons bodies, &c. (other than for the term of twenty one years, or three Lives, from the time as any such Lease or Grant shall be made or granted, whereupon the accustomed yearly Rent or more shall be reserved and payable during the said term) shall be utterly void, &c.*

The

The penning of this Act, and that of 1 Eliz. Co. 5. 14. b. before-mentioned being in effect the same in substance, the construction is the same in effect; but in this Act there was no saving of Grants to the King, and therefore this Act being for the publick good, had restrained other Grants to him not warranted by this Statute, though 1 Jac. cap. 3. had never been made.

And here note, That as the Parsons and Vicars had not their power any wise enlarged by the Statute of 32 H. 8. So they had no restriction upon them till this Act; but from henceforth they are restrained from making any Lease or Grants, other than for twenty one years or three Lives, with the qualifications above-mentioned in the Statutes, and such Leases must be confirmed by the Patron and Ordinary, because excepted in the inabling Statute of 32 H. 8. before.

Parsons and Vicars restrained by this Law.

And whereas after the making of this Statute, Heads of Colledges, Deans, Prebends, &c. might have made concurrent Leases, as well as Bishops might; There is a *Proviso* in the Statute of 18 Eliz.

That all Leases then after to be made by any the aforesaid Ecclesiastical, Spiritual or Collegiate Persons, or others of any of their Ecclesiastical, &c. Lands, &c. whereof any former Lease for years is in being, and not expired, surrendered or ended within three years next after the making of any such new Lease, should be utterly void, frustrate and of none effect, any Law, &c.

18 Eliz. c. 11. No concurrent Lease, but within three years before the former ends.

By this *Proviso*, it should seem, the Parliament was of opinion, that concurrent Leases might be made, but has by this *Proviso* so restrained them, that they cannot be made but within

within three years before the Determination of the former.

Bishops not in this Act.

But Bishops are conceived not to be comprehended within this *Proviso*, for though the words are general enough, yet the particulars mentioned before the general words being of an inferior rank, the general words cannot draw in the more worthy.

Which Bonds and Covenants shall be void.

And there is a *Provision* in this Act of 18 El. That all Bonds and Covenants then after made for the making or renewing of any Lease contrary to the intent of that Statute, or of the Statute of 13 Eliz. c. 10. should be utterly void.

13 Eliz. c. 20.
Leases of Parsons to be void by Non-residence.

In the 13th year of Queen Elizabeth there is an Act of Parliament made, whereby it is enacted, That no Lease made after the 15th day of May following of any Benefice or Ecclesiastical Promotion with Cure of any part thereof, and not being impropriated, should endure any longer, than while the Lessor should be ordinarily resident and serving the Cure of such Benefice without absence above fourscore days in any one year; but that every such Lease [so soon as it, or any part thereof, should come to any possession above forbidden, or] immediately upon such absence shall cease and be void, and the Incumbent so offending shall, &c. lose one years profit of his said Benefice to be distributed by the Ordinary to the Poor of the Parish.

These words within the [] are repealed by 14 Eliz. c. 11.

Charging Parsonages, void.

And by the same Statute it is further enacted, That all charging of such Benefices with Cure then after with any pension; or with any profit out of the same to be yielded or taken, other then Rents reserved upon Leases, should be void.

Where a Parson may demise and be Non-resident.

But where any Parson should be qualified to have two Livings, he may demise the one of them;

them, where he is not ordinarily resident, to his Curate only, that shall there serve the Cure. And such Lease shall endure no longer than during such Curates residence without absence above forty days in any one year.

And by 14. Eliz. it is enacted, That all Leases, Bonds, Promises and Covenants of and concerning Benefices and Ecclesiastical Livings with cure to be made by any Curate, shall be of no other or better force, validity or continuance, than if the same had been made by the beneficed person himself, that shall demise the same to such Curate. 14 El. cap. 11.
Leases, Bonds
and Covenants
to be void.

And by the same Statute it is enacted, That the restrictive Statute of 13 El. c. 10. before, shall not extend to any Grant, Assurance or Lease of any Houses belonging to any the persons, &c. (in the said Stat. of 13.) nor to any grounds to any such houses appertaining, &c. in any City, Borough, Town Corporate, or Market Town, or the Suburbs of any of them; but that all such houses and grounds may be granted, demised and assured, as they might have been before the making of the said Act, so always as such house be not the Capital, or dwelling house used for the Habitation of the Parsons, &c. nor have above ten Acres to the same. Houses, Incorporations, &c. how
to be leased.

Provided, That no Lease be made by virtue of this Act in reversion, nor without reserving the accustomed yearly Rent at least, nor for a longer term than for forty years at most, charging the Lessee with repairs, and no alienation in Fee, unless Lands of as good yearly value be settled, &c. in lieu thereof. Not to lease in
reversion.

There is likewise another Proviso in this Act, That all Bonds, Contracts, Promises and Covenants be void. Bonds, Contracts
Covenants, Pro-
mises, where to
be void.

nants to be made for the suffering or permitting any person to enjoy any Benefice or Ecclesiastical Promotion with Cure, or to take the Profits or fruits thereof, other than such Bonds and Covenants as shall be made for assurance of any Lease heretofore made, shall be of no other force than Leases made by the same person.

18 Eliz. c. 11.

And by another Statute made in the 18th year of the same Queen Eliz. it is enacted, That after complaint made to the Ordinary, and Sentence given upon any offence committed by the Incumbent against the Statute of 13 Eliz. c. 20. whereby he shall or ought to lose a years profit of his Benefice, &c. That then the Ordinary within two months after such sentence and request made by the Churchwardens of the Parish, where, &c. or one of them shall grant the Sequestration of such profits to such Inhabitant or Inhabitants within the same Parish, &c. as to him shall seem meet, &c.

Every Parishioner may take advantage.

And that upon default of the Ordinary, it shall be lawful for every Parishioner, &c. to retain, &c. his Tythes, and for the Churchwardens to enter upon the Glebe-land Rents and Duties of every such Benefice to be employed to the use of the poor, &c. until such time as Sequestration shall be committed, by the Ordinary; and then the Churchwardens and Parishioners to accompt to such to whom the Sequestration shall be committed, who is to employ the whole profits according to the Act, upon pain to forfeit the double value of the profits withholden, to be recovered in the Ecclesiastical Court by the poor of the Parish.

Having thus for the Readers satisfaction given him an Abstract of all the Statutes concerning

ing the Leases of Ecclesiasticks of all kinds, I shall briefly sum them all up, and proceed to take a view of such other Statutes as the Parsons, Vicars, &c. are in any manner in danger of.

Upon the whole matter it appears, that Arch-*What Leases*
bishops and Bishops may make Leases for twen-*may be made by*
ty one years, or for one, two, or three Lives, *Bishops and*
with the qualifications before-mentioned with-*Archbishops.*
out any Confirmations at all: And they may make concurrent Leases for twenty one years upon Leases for twenty one years from the making, with confirmation of the Dean and Chapter, with such qualification as is aforesaid, though there be above three years in being of the old Lease at the time of the making the new, and where the Bishop has two Chapters, there the concurrent Lease must be confirmed by both Chapters; unless it be as it was in the Bishop of *Waterford's* Case, which was thus: The Bishop of *Waterford* had long ago the Bishoprick of *Lismore*, and the Chapter united to that of *Waterford*: And in all Grants made of the Lands belonging to *Lismore* that Chapter only *Co. 12. 71. 2.*
confirmed, and all Grants made of the Lands *b.*
anciently belonging to the Bishoprick of *Waterford*, the Chapter of *Waterford* only confirmed: And because the Union was not extant, all the Judges held the confirmation of the one in the manner aforesaid was good, for it shall be intended, that it was so provided for upon the consolidation; but otherwise all the Judges held, *Dyer 282 p. 26.*
that both Chapters ought to have confirmed.

But if a Bishop had two Chapters, and one of *Ibid.*
them surrenders, is suspended or dissolved, the confirmation of the other suffices:

H

There

M. 14 & 15 El.

There is a Case in Mr. Justice *Harpurs* Reports, where the Case is put, That a Bishop made a Lease dated 2 *die Maij*, confirmed the third day, and sealed the fourth day of *May*, and held a good Lease and well confirmed.

Harpurs Rep.

M. 14 & 15 El.

But a confirmation by the Dean and Chapter after the death of the Bishop, comes too late by *Catlyne*, *Suthcoate* and *Windham* against *Wray*.

T. 6 El. More 66.

But if a Bishop make several concurrent Leases, and the latter is first confirmed, and after the first is confirmed; in this Case the first Lease shall be preferred, because nothing passes by the confirmation in point of Interest, but a meer consent.

T. 8 Jac. Scac.

Sir Edw. Dimocks Case.

Rolls 1. 477. h.

7.

Cro. El. 141.

More 253.

If a Bishop make a Grant to the King, which is confirmed by the Dean and Chapter before the Grant is inrolled, this is well enough.

But note, That a Bishop cannot make a concurrent Lease for life, though upon a precedent Lease for years; nor a concurrent Lease for years, where there is a Lease for life in being.

Leases by Deans,
Prebends, Col-
ledges, &c.

Deans, Prebendaries, Heads of Colledges, Masters of Hospitals, and other Ecclesiastical Persons mentioned in the Statute of 13 *Eliz. c. 10.* may make Leases for 21 years, or any lesser number of years, or for one, two, or three Lives in possession, according to the qualifications above mentioned; and they may make concurrent Leases as Bishops may with confirmations; but they must be within three years of the determination of the former term by expiration, surrender, or otherwise: So that in this point the Bishop has the advantage.

18 Eliz. c. 10.

And though the enabling Statute of 32 *H. 8.* gives power to make Leases to hold from the making, or day of the making; yet the restrictive Statute of 13 *Eliz.* makes them void, if they

13 Eliz. c. 10.

they be not made to hold from the making, and not from the day of the making; *quod nota*: But the Leaſes of Biſhops and Archbiſhops are not within that Act, but the Act of *primo* of the Queen, is, That all Leaſes ſhould be void, other than for 21 years or three Lives from the time of the commencement: Note the different pen- nings.

And forasmuch as all concurrent Leaſes of a-ny Biſhop, Dean, Prebend and Archdeacon are to be confirmed, it is convenient to let the Reader know who is to confirm the ſame; therefore for the Readers ſatisfaction, he is to know that the Leaſes of Biſhops and Archbiſhops are to be confirmed by the Dean and Chapter, or Deans and Chapters, if there be ſeveral Chapters: Grants made by a Prebend are to be confirmed by the Biſhop, Dean and Chapter: The Grants made by Deans are to be confirmed by the Biſhop and Chapter: The Grants made by the Archdeacon, by the Biſhop, Dean, and Chapter: The Grants of Parſons and Vicars, with their Patrons and Ordinaries: And Grants by the Incumbent of a Donative, by the Patron alone.

Concurrent Leaſes, and who is to confirm Leaſes.
Rolls 1.481.
p. q r.
Dyer 221. p. 18.
357. p. 42.
Plow. 528.
Dyer 61. p. 30.
Co. 5. 81. a.
Who are to confirm Leaſes.

But if a Parſon make a Leaſe, which is confirmed by the Biſhop only, who is Patron, without the Dean and Chapter, which ought to have joyned, it ſhall bind the Succeſſor during the lives of the Biſhop and Incumbent, although the Biſhop be tranſlated.

But Grants by Parſons, Vicars, Prebends, &c. before induction or installation, &c. although confirmed, are not binding to the Succeſſor.

But if the King be Patron of a Prebend, then the King and Dean and Chapter, and not the Biſhop, ought to confirm the Grant.

Co. 5. 81. a.
Dyer 72. a. b.
Cro. El. 472.

A Lease made by a Prebendary, Parson, Vicar, &c. may be confirmed for part of the term, if it be for years, that is, confirm the Land to the Lessee for so many years of the term; but if the term be confirmed for part of the term, it were absurd and repugnant, and should be good for the whole term: And as such Lease may be confirmed for part of the term, so it may be for part of the Land.

Rolls 1. 476.
f. 1. 2.

If a Parson, &c. make a Grant, which is confirmed by the Patron and Ordinary, and after be deprived; yet the Grant is good. A Husband seized in the right of his Wife of an Advowson, the Parson makes a Lease warranted by the Statutes before-mentioned, and the Bishop and Husband confirm it; this shall not bind the right of the Wife but during the Husband's life, but that the Successor after his death will avoid it, that comes in by the Presentation of the Wife. So if Tenant in tail, being Patron, confirm the Grant of the Parson with the Bishop, this shall not bind the Incumbent of the Issue in tail.

Rolls 1. 480.
n. 2, 3.

Rolls 1. 480.
n. 4.

If an Usurper present, and confirm the Lease of his Incumbent with the Bishop, and after is removed by *Quare Impedit*, &c. this shall not bind the Clerk of the true Patron.

Cro. Car. 582.

If the true Patron grant the next Avoidance, and then confirm the Grant of the Parson, who after dies; the Incumbent presented by him that had the next Avoidance shall avoid the Lease, and his very entry upon the Lessee avoids the Lease for ever.

Rolls 1. 480.
n. 5.

Cro. El. 430.

If the Parson makes a Lease to the Patron, which is confirmed by the Bishop, this is not good; but if the Patron grants it over, it amounts to a confirmation.

Co. 5. 15. a.

If

If a Prebend, Parson or Vicar make a Lease, Rolls 1.481.p.1. and the Bishop being Patron, confirms it without the Dean and Chapter; yet this shall bind the Bishop and all the Prebends, Parsons, &c. which he shall Collate.

If a Parson had made a Lease for above 21 Cro.El.18. years before the Statutes of 13 and 14, Eliz. which had been confirmed after, this had been good, and not within the restriction of those Laws.

If a Parson Leases where there are two Patrons, both ought to confirm as should seem. 1 Leon.233. Quære.

If the Patron and a succeeding Bishop confirm the Lease of the Parson, it is good enough. Cro.Car.38.

A Prebend made a Lease, reciting that it was with the consent of the Bishop, who signed and sealed the Lease to the Lessee, but was no party to the Deed, *quære* if good. Dyer 106.p.21. Quære.

And having said thus much of Confirmations, let us see, what Leases a Parson or Vicar may make at this day, considering all the before-mentioned Statutes.

And first, it is to be observed, that at and by the Common Law a Parson or Vicar might have granted or charged his Glebe in Fee-simple with the confirmation of the Patron and Bishop; but being excepted out of the enabling Statute of 32 H. 8. he could never make any Lease or Grant to bind their Successors, without such confirmation; then by the Statute of 13 Eliz. Parsons and Vicars are restrained: So that they cannot grant but for 11 years, or three Lives from the making of such Lease, and not from the day of the making, as is before observed; and these Leases and Grants must be with the confirmation of the Patron and Ordinary, *Leases by Parsons and Vicars.* 32 H.8. c.28. 13 El. cap. 10.

with all the qualifications expressed in the beginning of this Chapter.

And it should seem, they may make concurrent Leases, as Deans, Prebends, &c. may do within three years of the end of the former Leases.

It has been a question, Whether a Parson or Vicar at this day can make any Lease at all to bind his Successor: for by the Statute of 13 Eliz. cap. 20. it is enacted, *That Leases of Parsons, Vicars, &c. that have Cure of Souls, shall endure no longer then they shall be ordinarily resident and serve the Cure; and that if such Parson, &c. shall be absent from their Cure above 80 days in one year, that then such Lease shall cease and be void.* Now when a Parson dies, and 80 days incur, and this being a Law for the advancement of Religion and Hospitality, to avoid Dilapidations, it shall have an equitable construction for the preferring of these ends; therefore some have held, that the death of the Parson, Vicar, &c. after 80 days have incurred from their deaths, shall make all their Leases and Grants void, though never so sufficiently confirmed; and rely very much upon the Preamble of the Statute, which begins, *That the Livings appointed for Ecclesiastical Ministers may not by corrupt and indirect dealings be transferred to other uses, Be it enacted, &c.* But by these Leases it is apparent the profits are converted to other uses, &c. But others have held the contrary Opinion, because such absence is not voluntary, but by the Act of God, and regularly these cannot be said absent that are not in esse: And though Crook report Mott and Hales's Case adjudged in point that their Leases are

13 Eliz. cap. 20.

Parsons Leases which is confirmed, and dyes.

Cro. El. 123.

are void by death: Yet *More* reporting the same *More* 270.

Case, says, *As to the matter in Law the Judges were divided two against two, and that the Judgment was given upon a misrecital of the Statute.* And this point, as I am informed, came lately in question in the *Kings Bench*, and was adjudged that death doth not avoid such Leases. *Ideo quære inde.*

Bayley versus Munnes. T. 24 Car. 2. B.R. Quære.

Dyer 372. p. 11. When Parson's Leases shall be void by Non-residence.

There is a *quære* in *Dyer*, Whether such Leases shall be void upon 80 days absence *ab initio*, or but from the time of absence by 80 days; but it seems to me with some clearness, that it shall only be void from 80 days absence, and not *ab initio*. For first, the words of the Statute are, *That such Lease shall indure no longer than the Lessor shall be ordinarily resident, &c.* So that till then it is to indure, and the Statute closes, *Dyer 177. p. 31.* that upon such absence the term shall cease, which it could not do, if it had not a being before; for a thing cannot cease to be, that has not been.

Quære.

But another *quære* may be started in this Case upon the reason in *Lincoln Colledge Case*, Whether such Lease shall be void against the present Incumbent that made it, or only against his Successors: But it seems to me with some clearness, that the intent of the makers of this Act was to make such Lease void against the Lessor himself upon such absence: For, as before is said, the Statute says it shall indure no longer, which is a term of limitation, and that immediately upon such absence the Lease shall cease and be void; and it cannot cease immediately upon the absence, and yet be good during the life of the Incumbent. But in the Case of *Revel versus Hart, H. 43 Eliz. B.R.* the Court

Whether void against the Parson himself. Co. 3. 59. b. 60. a. And there has been some late Opinions, as I have heard against the resolution in Lincoln Colledge Case.

Dyer 372.p.11. held the contrary, as my Reporter says. *Ideo*

Quære. *quære.*

Dobbins versus

Gerrard, p 39.

El.B.R.

If any Parson, Vicar, &c. be suspended, inhibited or disabled to serve the Cure by the space of 80 days in a year, this shall not make such Lease void, for the not serving the Cure must be voluntary: And it has been held, that if a Parson be resident, and do not serve the Cure, or serve the Cure and be absent by 80 days, that in both these Cases it will make such Lease void.

Though this Statute upon 80 days absence makes such Lease void made by Parsons and Vicars, and says nothing of confirmation; yet a confirmation of the Patron and Ordinary in this Case seems not to amend the matter; for if the Lease be void, the confirmation is of no avail.

St. 28 H.8. c.11.

*Parson Leases
and resigns.*

At the Common Law, if a Parson, Vicar, &c. had made a Lease and resigned, the next Incumbent might have entred immediately upon the Lessee; but by a Statute made in the 28th year of H. 8. *the Lessee may hold on his term for six years, if the Parson that made his Lease so long live, and the term were made for so long time; but upon such Lease there must be so much Rent reserved within forty shillings as such Benefice is valued at in the Kings Books.* See the Statute at large.

And by the same Statute, If a Parson make a Lease and resigns and dies, the Tenant shall hold out his Lease for the year that was commenced at the time of his death if the term were to have had so long continuance, if the Parson had not dyed. But this seems only of such Lands as are ploughed, for the succeeding Parson is to have

have the Parsonage House and Glebe which is not sowed within a month after he is inducted, allowing a reasonable deduction for the Rent reserved upon such Lease.

But in both Cases the Lessee must pay the reserved Rent to the succeeding Incumbent, who is enabled to sue or distrain for the same.

And such Lease must be in writing under hand and seal, and not by parol.

But it should seem the Statute of 13 *Eliz.* be. 13 *Eliz.* cap. 20. fore has made this Law of no effect.

And having now done with these Statutes, as to Leases, let us next consider what Bonds, Covenants, Promises, &c. are void within the Statute of 18 *Eliz.* before-mentioned.

Covenants, Bonds, &c. made for the enjoying Houses within Cities, Corporations, &c. are not void within this Law; for this Law makes no Bonds, Covenants, &c. void, which are not against the intent of this Statute, and the Statute of 13 *Eliz.* cap. 10. but Leases of Houses and Lands in Cities, &c. by the Statute of 14 *Eliz.* cap. 11. are exempted out of 13 *Eliz.* cap. 10. and are not within the Statute of 18 *Eliz.* before.

Hob. 269.

Covenants,
Bonds, which
good.

A Parson made a Bond to resign upon request, and afterwards a Lease to his Patron of part of the Glebe for twenty one years: In an Action brought upon this Bond, the Incumbent pleaded the Statute of 18 *Eliz.* and averred that this Bond was made to secure this Lease, and to compel the Incumbent to reside, and adjudged a good Plea, and an apt averment.

More 641.

A Parson made a Lease, and in the Lease covenanted not to be absent by the space of 80 days in any one year, and gave Bond for the

Cro. El. 489.

Noy 66.

per.

performance, and after became Non-resident for 80 days, and resolved that the Bonds and Covenants were both void.

Olivers Case
M.4 Jac.B.R.

A Parson made a Lease, and covenanted neither to do, or suffer to be done, any matter, whereby the Lease should become void, and after became Non-resident by the space of 80 days in a year, and this was held a good Covenant, and a Covenant that the Parson should be resident was held not to be against this Law by *Popham, Tanfield, and Clench* against *Williams*. *Ideo quare.*

Quære.
Leases of Col-
ledges, Hospitals

And having now done with Leases to be made by Ecclesiasticks of every kind, and having therein exceeded my bounds beyond Parsons and Vicars to all other Ecclesiasticks, since the Leases of Colledges and Hospitals come in my way, I will give the Reader what satisfaction I can concerning them: And as to them,

13 Eliz. cap.10.

It is to be observed, That they are not comprehended in the enabling Statute of 32 H. 8. nor in any other Statute that I find till the restrictive Statute of 13 Eliz. whereby, amongst the rest, the Masters and Fellows of Colledges, and the Masters and Guardians of Hospitals are disabled to make any Grants or Conveyances of any of their Possessions, other than for twenty one years, or three Lives, from the making of such Lease, and not from the day of the date, or from the date, as has been said: And this must be of Lands usually demised, and the accustomed Rent, or more, must be reserved with all the other qualifications mentioned in the beginning of this Chapter.

Stat. 18 Eliz.
cap. 6.

But there is a restriction upon Colledges by the Statute of 18 Eliz. that upon all Colledge Leases

Leases, a third part of the ancient Rent shall be reserved in Wheat and Mault, after the rate of 6 s. and 8 d. a Quarter Wheat, and 5 s. a Quarter Mault, to be delivered at the Colledges, and in default of the delivery to pay for the Wheat and Barley, after the rate the best Wheat and Mault shall be sold the next Market-day before the Rent should have been paid, and for default of such reservation the Lease to be void; and the Markets that are to set the prices, are, Oxford for Oxford, Cambridge for Cambridge, Windsor for Eaton, Winchester for Winchester.

And by the Statute of 18 Eliz. they are restrained to make any concurrent Leases till within three years of the end of the former terms that are in being. 18 Eliz. c. 11.

I shall now shew the Reader what things are demisable within these several Statutes, and what Reservations are good, and in what case the Acceptance of Rent by the Successor will make a Lease good, that was voidable within these Laws, and the several qualifications mentioned in the beginning of this Chapter.

What Leases shall be good.

One *Small* being possessed of the Manor of *Paddington*, by a Lease from a Bishop for a term of years, the Bishop made a Lease to another for three Lives, and before Livery the Tenant surrendred his former term, and it was held that the Surrender was made in due time, and the second Lease good.

Smalls Case.
M. 4 Jac. B.R.
Former in being.

A Prebend had usually been leased (excepting the Crab-trees) and that the Prebendary made a new Lease without excepting the Crab-trees, reserving the ancient Rent, with other due circumstances, and this Lease was held void against the Successor, by reason of the adding of the Crab-trees.

Cro. Jac. 458.
3 Bulstr. 290.
More in the new Leases than the old.

It

Co. 5. 15. 2.

Next avoidance
not demisable.

Co. 10. 60. b.

It hath been adjudged, That a Bishop, Dean, &c. cannot grant the next Avoidance of an Advowson, nor any Rent-charge out of the Possessions of the Church, but the same is void within the restrictive Acts before-mentioned, though these cannot be said any of the Possessions of their Churches.

Davenant vers.

Evesq; Salisbu-
ry, M. 23 Car. 2.
B.R.

And it hath been held, that where a Bishop demised a Rectory for Lives, and covenanted to discharge, save harmless, and indemnifie the Lessee, &c. from all Pensions, Procurations, Subsidies, and from all other payments of any Sum of Mony, Demands and Duties whatsoever, ordinary or extraordinary, which shall be due and issuing out of the Premises, that this Covenant would not bind the Successor, unless it had been in the ancient Leases: And the Lord Chief Justice *Hale* was of opinion, That such Covenant, though it had been in former Leases, should not bind the Successor for the Royal Aid, or any new Charge by Act of Parliament.

Co. 10. 61. b.

But a Bishop may grant an ancient Office with the ancient Fee (if it be a necessary Office for the life of the Officer.) But the Bishops cannot grant such Office to two, or in Reversion: And a Bishop cannot grant an Annuity, *pro consilio impenso & impendendo*, to bind his Successor, though it be confirmed by the Dean and Chapter.

Ca. 10. 61. b.

And it hath been resolved that a Bishop of late erection may grant an Office of necessity to one in possession for life, with a reasonable Fee.

But these Grants must be all confirmed by the Dean and Chapter, because they are not good within the Statute of 32 H. 8.

But

But where Offices have anciently been granted in Reversion, they may still be granted in Reversion with Confirmation. Co. 10. 62. a. Cro. Car. 555.

If a Bishop grant an ancient Office with the ancient Fee and more, and the Grant be entire, as where the ancient Fee was 5 Marks, and the new 5 l. 'tis void for all. But if it be several, as 5 Marks, and Pasturage for two Horses, it is good for the ancient Fee, and void for the other, *per Hutton and Yelverton versus Crook and Harvey.* Evesq. Chichest. vers. Freedland. Leyes Report. 72.

If a Copyhold Escheator be forfeited, the Bishop may grant it in Fee by Copy of Court-Roll, notwithstanding the Statute of 1 Eliz. Collins and Jones's Case, Ley 80.

It was also resolved, That where an Archdeacon made a Lease for three Lives warranted by the Statutes before-mentioned, and the Lessee granted a Rent-charge for an hundred years, which was confirmed by the Bishop, Dean and Chapter, that notwithstanding the same was void against the Successor within the Statute of 13 Eliz. cap. 10. Co. 5. 15. a. Charges void.

If a Writ of Annuity should be brought against a Parson, &c. pretending the same due by Prescription, and although the Parson pray in aid of the Patron and Ordinary, and upon a Plea pleaded by them, the Plaintiff obtains a Verdict and Judgment, and all this by practice and fraud to charge the Glebe, it is void against the Successor; for these Statutes being made for the benefit of the Church, advance of Religion and Hospitality, and to avoid Dilapidations, shall always have a favourable Construction. Co. 5. 14. b. 19 Aff. p. 9.

It is regularly true, that where the Wife issue in tail, or Successor accepts the Rent after the death Acceptance of Rent, where it shall bind.

death of the Husband, Tenant in tail, or a Predecessor upon a void Lease made by the Husband, Tenant in tail or Predecessor, that such Acceptance will not affirm the Lease: But this Rule must be understood of such a Lease as is void *ipso facto*, without entry or any other Ceremony; and therefore if a Parson, Vicar or Prebend, &c. make a Lease not warrantable by the Statutes for twenty one years, rendring of Rent, and dyes, here no Acceptance of Rent by the Successor, &c. will affirm this Lease, because the same was void without Entry or other Ceremony; but if a Parson, Vicar, or Prebend make a Lease not warrantable within the before-mentioned Statutes for life or lives, reserving Rent, and dye, and the Successor before entry accept the Rent; this Lease shall bind him for the time; for this being an Estate of Freehold, could not be void before entry.

Herley 88.

Co. 3. 65. a.

35 H. 6. 3. &c. 4.

11 E. 3. Fitz.

Abbot 9.

8 H. 5. 19.

Dyer 239. p. 42.

F. N. B. 50. c

But if a Bishop, Abbot or Prior, which have the Inheritance in Fee-simple in them, make a Lease for lives or years not warranted by the Statutes before-mentioned, not being absolute void by their deaths, but only voidable by the entry of the Successor, if the Successor accept the Rent before Entry, be it for lives or years, he affirms the Lease for his life.

Rolls 1. 476. d.

If a Bishop make a Lease not warranted by the Statutes, rendring Rent, and dye, and his Successor appoints his Bayliff to collect his Rents of that Manor, who amongst the rest receives the Rent reserved upon this Demise, and accounts to the Bishop's Successor for it; this is a good Acceptance, and shall bind the Bishop for his time.

So if a Parson lease for life not warranted nor confirmed, reserving Rent, if his Successor receive Fealty of this Tenant upon this Lease, he has thereby affirmed the Lease for his time: The like it will be, if the Successor bring an Action of wast.

11 E.3. F.Ab-
bot 9.
Dyer 239.p.42.
2 H.4.2.2.

But if a Bishop make a Lease of Tythes or other things not manurable for life or lives, rendering Rent, and dies, and his Successor accepts this Rent, it will not affirm the Lease.

Cro.Jac. 173.

But whether such Acceptance upon a Lease for years of Tythes, &c. will bind the Successor, I must leave it a *Quære*, not finding that point any where resolved.

Quære.

I having now held the Reader long upon this subject, I shall now leave them, and proceed to examine, what Leases or Farms they may with safety take, or not take.

By a Statute made in the twenty first year of King H. 8. it is amongst other things enacted, *That no Spiritual Person shall in his own name, or in the name of any other, take to farm any Manors, Lands, Tenements or Hereditaments, upon the penalty of ten pounds for every Month that he holds the same; nor by himself, nor any other, shall buy Cattle, Corn, Lead, Tyn, Hydes, Leather, Tallow, Fish, Wool, Wood, or any manner of Victuals or Merchandizes, to sell again for gain, upon pain to forfeit the treble value of things so bought.*

Stat. 21 H.8.
cap.13.
Parsons, &c.
must not take
Farms.

But a Spiritual Person may buy such things for his own use, and if they do not fit him, he may sell the same again; and so where he hath not sufficient Glebe, he may take Grounds for the maintenance of his Family.

And

Shall not farm
another's Par-
sonage, &c.

And it is further enacted by the same Statute, That no Spiritual Person beneficed with Cure of Souls, shall farm the Parsonage or Vicarage of another to take any Rent or Profit out of such Farm, upon the penalty of forty shillings a week, and ten times the value of the Rent or Profit he shall take out of such Farm.

Must not keep a
Tan-house or
Brew-house.

And it is further enacted by the same Statute, That no Spiritual Person shall have or keep by himself, or any other, any Tan-house or Brew-house, other than for his own Family, upon pain to forfeit ten pounds per menssem.

Penalties how
to be recovered.

All which Penalties are given to the King and Informer, to be recovered in any of his Majesties Courts of Record at Westminster by Action of Debt, Bill, Plaint or Information, wherein no essoin, protection, or wager of Law is to be admitted, &c. M. 4. Car. 1 Scaccario, It was adjudged that a Spiritual Person, not beneficed, was not within this Statute,

Cragge versus
Lampley, M. 4
Car.

5 Eliz. cap. 5.
Where he may
license the eat-
ing of flesh.

By the Statute of 5 Eliz. there is authority given to the Bishop of the Diocese, Parson, Vicar or Curate of the Parish to licence any sick person to eat flesh during his sickness; and if his sickness continue above eight days after the granting of such license, then the same is to be registered in the Church Book, &c. and that license to endure during the sickness, and no longer.

Penalty if
needless.

And if any Parson, Vicar or Curate grant any license to any person or persons, other than such as evidently appears to have need thereof by reason of sickness, the Parson, Vicar or Curate that granted such license shall forfeit five Marks for every such license, and the license to be void.

In the 25th year of H. 8. there was a Statute made against the excessive number of sheep, wherein there is a Proviso, That it might be lawful to all Spiritual Persons, and every of them, to keep such and so many sheep upon their own Lands, and after such form and manner, and not otherwise, as they might have done before the making of the said Act.

Sheep.
Stat. 25 H. 8.
cap. 13.

There are several Acts of Parliament for punishing incontinent Priests, which though since the blessed Reformation (I do not mean the last pretended Reformation, but that in the time of E. 6. and Queen Elizabeth) are become obsolete and useless: Yet since I have promised them all the Statutes they may fall in the danger of, these are not to be omitted. But before I come to those particular Laws, I will beg the Readers pardon for giving him a short Historical account of the restriction of the Marriage of Priests, which gave the occasion of these Laws.

Intontinence.

Bellarmino in his Disputations endeavours to make the single life of Priests to be *Jure Divino*; but if not so, yet he goes about to prove that it has been enjoined by Canons as high as the Apostles time: And to that purpose vouches the Canons of the Apostles (which though they may be ancient, yet no rational man that peruses them, will believe they were made by the Apostles, or very near their time) in which I must confess I find a Canon that by implication forbids Priests to marry, but not married men to be Priests; and 'tis to this effect, *Ex his qui cœlibes in Clerum pervenerunt, jubemus, ut Lectores tantum & cantores (si velint) nuptiis contrahant.* But if he had lookt a little

De Clericis,
cap. 18. 19.

Canon 25.

Canon 5.
 Canons against
 the Marriage
 of Priests.

* Concil. Ancy-
 ran. Can. 10.

Hollinghead
 30. b. 10.

Hollinghead
 34. b. 10.

back in those Canons he would have found another manner of Prohibition in these words; *Episcopus aut Presbyter, aut Diaconus, uxorem suam prae-textu Religionis non abjicito: si abjicit, segregator à Communione, si perseverat, deponitur.* But however, it cannot be denied, but there were ancient Canons against the marriage of Priests, but those only forbids Priests to marry, but did not restrain married men from being Priests; and so it continued for many hundred years after Christs time, and for some time they might have married * with the licence of the Bishop; but never received or put in practice in *England*, though practised in *Italy, France, &c.* but the Priests here married, till *Anselme* Archbishop of *Canterbury*, a *Burgundian*, a powerful and busie Prelate, in a Synod or National Council held at *Westminster*, made a severe Canon against it; but he meeting with an obstinate Clergy, that were unwilling to change their Wives for Concubines (to speak in the softest word) were not obedient: whereupon (as my Author tells me) he called a second Council in the ninth year of that King, where he made more severe Canons against the married Clergy in the presence of the King and Nobility, to give them greater Authority, which he prosecuted with great zeal, but did not live to effect what he desired. I do not find that his Successor, *Rodolphus*, troubled himself much in this concern of the eight years that he governed the Church of *Canterbury*; but his Successor, *William Corbet*, followed the steps of *Anselme*, who for this and his other good works, was Canonized a Saint at *Rome*: And in the year 1126. called a Council or Convocation

vocation at *Westminster* against the married Priests, wherein one *John de Crema* or *Cremensis* the Popes Legate, sent to manage this business, being a learned man, made an eloquent Oration in commendation of Chastity and a single Life, and inveighed violently against the married Clergy; and as divers Authors of good credit affirm, the great Orator was the same night taken in bed with a woman, which made him to return with shame enough howsoever, as Bishop *Godwyn* tells us, that in that Convocation the Canons were renewed against the married Clergy; but the Archbishop finding himself too weak to deal with so stubborn a Clergy, commended the care of this business to the King, who taking advantage of the Canons, squeezed some money out of the married Clergy by way of Commutation. I find no more of this matter, till after the death both of this Archbishop and *H. 1.* But I find there was a Convocation held at *London*, *Decemb. 13. 1138.* by the command of *Albert* Cardinal, Bishop of *Hosia*, where this matter was again violently prosecuted; and I find no more after of it till in a Convocation or Council held under *Rich. Wethershead* Archbishop of *Canterbury*, 1229. in which it is decreed, *Qui autem in Subdiaconatu vel supra ad matrimonium convolaverint, mulieres renitentes & in-vitas relinquunt.* But it should seem, notwithstanding all this persecution, that for some years after some married men held their Livings: For in a Synod or Council held by *Otho* the Popes Legate at *St. Paul's* in *London*, in the year 1237. there is a Canon to this effect, *Innotuit nobis, pluribus referentibus fide dignis, quod multi pro-* *Cap. de uxori- tis à beneficiis priæ amovendis.*

Hoveden in H. 1.

274.

Speed 461. a.

&c.

Bp. Godwyns

Catal. of Bish.

83. Mat. Paris.

LXX. agrees

with Hoveden;

and says, *Quod**ipse cum die illa**Corpus Christi**consecrasset post**vesperam fuit**in meretricio**interceptus: res**ipsa notissima**negari non po-**test, dum mag-**num decus in**sumum dede-**cus commuta-**vit.*

Goodwin 84.

Fullers. Eccl.

Hist. 27.

Lindw. Si qui

Clerici.

prie salutis immemores, Matrimoniis contrahitis, clandestine retinere cum uxoribus Ecclesias, & Ecclesiastica Beneficia adipisci de novo, & promoveri ad sacros Ordines contra statuta sacrorum Canonum, non formidant, &c. And then proceeds, *Quod si repertum fuerit aliquos taliter contraxisse, ab Ecclesiis & Ecclesiasticis Beneficiis (quibus tam eos quam quoslibet alios uxoratos fore decernimus ipso jure privatos) removeantur omnino, &c.*

This Nail being thus at length driven to the head, the Secular Clergy lay about 300 years under this Bondage, and though if they would be at the cost they might have Dispensations to keep Concubines, yet for the credit of his Holiness, there was great care taken they should not do it publicly, or scandalously: To which purpose there is a Canon in the same Council I last mentioned, to this effect, *Statuimus, & statuendo precipimus, ut ubi Clerici, & maxime in sacris ordinibus constituti, qui in domibus suis & alienis detinent publice Concubinas, eas a se prorsus removeant infra mensem, & illas vel alias de cætero nullatenus detenturi, &c.*

Cap. de Concubinis. Clericorum removendus.

* Nota.

Canons against Concubines.

Cap. Clericalis Ordinis.

* Nota.

There was another Canon much like this, made in another Council held under Stephen Langton Archbishop of Canterbury at Oxford, not long before, in the year 1222. to this effect, *Quod Clerici Beneficiati aut in sacris ordinibus constituti in Hospitiis suis publice tenere Concubinas non audeant, nec etiam alibi cum scandalo accessum publicum non habeant ad eas.*

So that it appears clearly by these Canons, that Clerks were not in those days positively and absolutely forbidden to keep Concubines; but it must not be done *publice nec cum scandalo,*

dalo, nor must they have *publicum accessum*.

And it appears by the *centum gravimina*, *Dispensations* that were presented to the Pope about the year *for Concubinage* 1521. by the *German Princes*, that it was one *Hist. H. by my Lord Cherbury.* of the grievances of that Nation, that the Pope *p. 131.* permitted Clerks, Religious and Secular Persons *Art. 74.* to live publicly with their Harlots, and get *Art. 91.* Children; and that in most places the Bishops and their Officials not only tolerated Concubinage upon paying money in the more dissolute sort of Monks, but also exacted it of the most Continent, saying, *It was then at their choice whether they would have them or no.*

So upon the whole matter, it seems; it was no offence in a Clergy-man, that had a dispensation to keep a Concubine privately in a nook without scandal, and go to her in the dark; but to keep a Wife of his own was a sin against the Holy Ghost, he must be deprived, he must be deposed. And therefore I cannot blame the *German and French Laity*, that they were so solicitous in the Council of *Trent* to have their Priests married, being loath, as should seem, to trust their Wives and Daughters at Confession with Priests that had not Wives of their own. And it was no less a religious than prudent expression of Pope *Pius* the Second, *That though there were many weighty Reasons why Priests should be restrained from Marriage, yet the Reasons for restoring them their Wives were the more weighty.*

I would not have the Reader to think, that I speak this to reproach the Church of *Rome* with this matter, as any of the allowed Doctrines of that Church; for I know there is many very severe Canons against the Incontinence of

Calvins Inst. 1.
4.c.12.Sect.23.

Dyer 133. p.1.
2 H.4.16.a.
Cap.de uxoris
a beneficiis
amovendis, ubi
supra.

Priests, and not so only, but that forbids them to keep any Women in their Houses, but Mothers, Sisters, and other near Relations, to avoid scandal and temptations. But I write this to shew the corruption of the Court of *Rome*, for whilst the Pope has power to dispence with the Canons of the Church, mony will make the best ineffectual there.

1 H.7. cap. 4.
*Statute that the
Bishops should
imprison Priests
for Incontinence.*

Having given the Reader this Historical account concerning the restraint of the marriage of Priests, and the success of it, I will in the next place shew what Acts of Parliament have been made relating to this matter, and which are in force at this day.

In the first year of H. 7. there was an Act made, *That it should be lawful to all Archbishops and Bishops, and other Ordinaries, having Episcopal Jurisdiction, to punish and chastize such Priests and Clerks and Religious men, being within the bounds of their Jurisdiction, that should be convicted before them, by Examination and other lawful Proofs requisite by the Law of the Church, of Avowtry, Fornication, and Incest, or any other fleshly Incontinency, by committing them to Ward and Prison, there to abide for such time as shall be thought to their discretions convenient for the quality and quantity of their Trespasse. And that none of the said Archbishops, &c. be thereof chargeable, of, to, or upon any Action, or false or wrongful Imprisonments, but that they be utterly thereof discharged in any of the Cases aforesaid, by virtue of this Act.*

*It seems a Canon would not
justify an Im-
prisonment.*

31 H.8. cap. 14.
*Made Felony to
use their own
Wives.*

This Law, for ought I know, stands still in force: But there was a severe Law made in the 31th of H. 8. whereby it was made Felony for

a Priest carnally to use a Woman to whom he had been married or contracted; or if he kept company or familiarity with her, or if any Priest kept a Concubine, as by paying for her board, maintaining her with mony, or other gifts or means, to the evil example of others, he should forfeit all his Goods, Chattels, and Spiritual Promotions, and be put in Prison for the first offence, and the second offence to be Felony.

But this seeming too severe, was the next year repealed, and it was enacted, *That such Offender should for the first offence lose all his Goods, Chattels and Debts, and lose the profits of all his Ecclesiastical Promotions; but one for his life, for the second Offence to forfeit his Goods, Chattels and Debts, and the profits of all his Lands, and of all his Spiritual Benefices, Promotions and Dignities for his life. And for the third Offence should make the like forfeiture, and be Imprisoned during life.* 32 H. 8. c. 14. mitigated.

By an Act of Parliament made in the 31 of 31 H. 8. c. 14. H. 8. which is commonly called the Act of the *The six Articles* fix bloody Articles, by the third Article it was *make the marriage of Priests* declared, *That Priests after they have received Orders, might not marry, and to affirm the contrary thereof, was made Heresie and Treason by that Act:* But this bloody Act was repealed by 1 E. 6. cap. 12. Heresie.

By the Statute of 2 and 3 Ed. 6. cap. 21. *All Laws against marriage* all Laws, Statutes, Canons, Ordinances, and *gainst marriage* Constitutions made against the Marriage of *age of Priests* Priests are made null and void. made void.

And by another Statute made the fifth and Children legiti- sixth of E. 6. cap. 12. it is adjudged and declared, *That the marriage of Priests is lawful, and legitimates their Children, and makes them* mate.

capable to endow their Wives, and to be Tenants by the Curtesie. But these Laws were repealed by the Statute of 1 Mariæ cap. 1.

1 Jac. cap. 25. However it came to pass, I know not, but for ought I can find, these Acts lay repealed all Queen Elizabeth's time, till 1 Jac. then the latter Act was revived and made perpetual, and their Children made legitimate.

So that upon the whole matter, all Acts of Parliament, Canons, Constitutions, &c. that restrain the marriage of Priests, or that illegitimate their Children, are made null and void; but the Canons and Acts of Parliament that punish their Incontinency stand in force. Next let us see what Priviledge the Clergy have right to at this day.

CHAP. XI.

The Eleventh Chapter shews what Priviledges belong to the Clergy at this day by the Common and Statute Laws of this Realm, and likewise by the Laws Ecclesiastical.

The Priviledge of the Clergy.

2 Inst. 3. 625.

4.

May not be Officers temporal.

5 E. 3. c. 5.

1 R. 2. c. 15.

Must not be arrested in

Church or

Church-yard.

THE Laws of this Realm have allowed the Clergy in Holy Orders many great Priviledges: First, In their Persons, they are not compellable to serve in any Temporal Office, as Sheriff, Constable, Overseer of the Poor, &c. Neither can they be prest to serve in the Wars; neither may they be arrested in the Church or Church-yard, when they are attendant on Divine Service, upon pain of Imprisonment, and ransom

ransom at the Kings pleasure, and likewise to make agreement with the party.

And by a Statute made 1 *Maria*, it is enacted;

1 *Maria* Sess. 2.
cap. 3.

Must not be disturbed praying
or preaching.

That if any Person, &c. of their own Power and Authority at any time, &c. shall or do willingly or of purpose, by open and overt word, fact, act or deed, maliciously or contemptuously molest, let, disturb, vex or trouble, or by any other unlawful way or means disquiet or misuse any Preacher or Preachers, &c. licensed, allowed, or authorized to preach by the Queen, or by any Archbishop or Bishop of this Realm, or by any other lawful Ordinary, or by either of the Universities, &c. or otherwise lawfully authorized or charged by reason of his or their Cure, Benefice, or other Spiritual Promotion or Charge, in any of his or their Sermon or Collation in any Church, Chappel, or Church-yard, or in other place appointed to be preached in.

Or if any Person, &c. shall maliciously, willingly or of purpose, molest, let, disturb, vex, disquiet, or otherwise trouble any Parson, Vicar, Parish-Priest or Curate, &c. saying, doing, singing, ministering or celebrating Mass, or other Divine Service, Sacraments, &c. that at any time then after shall be allowed, set forth or authorized by the Queens Majesty.

That the Offender upon Conviction before two Justices of the Peace, shall by them be committed to the Goal without bail or mainprize for three months, and after to the next Quarter Sessions; where if he repent and be reconciled, then to be discharged of his Imprisonment, finding Sureties for his good behaviour; and if he fail therein, to be continued till the next Quarter Sessions.

This

This Act, though made in the time of Popery, is still in force, and may be executed upon such as disturb the present Ministers, Parsons, Vicars and Curates, &c. And though it refer to such Church-Service as then after should be settled by the Queen, yet I conceive it extends to her Successors; and a settlement by Act of Parliament is a settlement by the King in the most superlative manner. And the late Act for Uniformity declares and enacts, *That all former Acts for Uniformity of Common Prayer shall be of force, and extend to the Book of Common Prayer.*

14 Car.2.c.4.

Must not be arrested.

The Bodies of Clergy-men cannot be arrested upon any *Capias* sued forth upon any Statute-Staple or Statute-Merchant; for the Process's are made out conditionally *Si Laicus fuerit*: And if the Sheriff, or any other Officer, arrest a Clergy-man upon any such conditional Process, I conceive an Action of false Imprisonment lies against him that does it, or he may have a special *Supersedeas* out of the *Chancery*, (that is, the *Cursitors Office*.)

2 Inst. 4.

Regist.147.

Priviledge in their Goods.

Regist.260.a.

Free from Tolls.

And every Parson, Vicar, &c. is by the Common Laws of *England* free from the payment of Tolls in all Fairs and Markets, not only for all the Goods and Merchandizes gotten upon their Church-Livings, but also for all Goods and Merchandizes by them brought to be spent upon their Rectories and Church-Livings.

Pontage, Murage.

And they are quit of Pontage, Murage, and other like Charges; and if they be distrained for any of these, they may have a Writ out of the *Chancery*, as aforesaid, made of course without petition or motion, under the great Seal of *England*,

England, directed to the party that distrains or disturbs them for any of these things, commanding them to desist: And if such Writ be not obeyed, the Cursitor of course will make out an *alias* and *pluries*; and if none of those will be obeyed, an Attachment to arrest the party and detain him till he obey: And this Writ is called a Writ *De effendi quietum de Toloneo*, which you may see in the Register or in the *Natura Bre-*
vium. Regist. 260. a. F.N.B. 227. f.

They are not bound to appear or do Suit at the Sheriffs Turn, or any Leet or Law-day; and if they shall be distrained so to do, they may have a Writ of course in the *Chancery* directed to the Lord of the Leet, commanding him to forbear distraining them for any such cause, with like Process as in the last for his contempt. Not bound to appear at Leets and Sheriffs Turn. Regist. Or. 175. F.N.B. 160. c.

And by the Statute of *Circumspecte Agatis*, Stat. 13 E. 1. it is enacted, *De violenta etiam manuum injectione in Clericum, & in causa defamationis placitum tenebitur in Curia Christianitatis, dummodo ad correctionem peccati agatur; & non petatur pecunia.* Stat. 13 E. 1. 2 Inst. 491, 492, 493.

And if a Clergy-man have Lands by the Tenure of which he is subject to be Bailiff, Reave or Beadle, and be chosen into any such Office by reason thereof, he has a Cursory Writ out of the *Chancery* to discharge himself. Regist. Orig. 187. b. F.N.B. 175. b. Nos to be Bailiffs, Reaves, &c.

So if the Sheriff or Collector of the Tenth or Fifteens will disturb them in the Lands belonging to their Churches, &c. they may have the like Writ for their discharge, and like Process for disobeying of it, *ut supra*. Regist. Orig. 188. a. F. N.B. 176. a. Must not be disturbed by Collector of Tenths.

But it hath been held, That Tythes may be extended upon an *Elegit* for the Debt of the Parson, Harwood versus Palyn. 24 Car. 1. B.R. per B.

Parson, *quod mirum*: But the *Elegit* being given by a Statute in which Tythes are not excepted, it will draw in Tythes.

2 Inst. 633,
634, 635.
*The privilege
of Clergy in
criminal Cases.*
* Lindwood.
*cap. Clerici pro
suis criminibus
detent. gloss.
verb. pro con-
victis.*
West. 1. cap. 2.
Malbr. c. 27.
25 E. 3. cap. 4
and 5.
4 H. 4. c. 3.
4 H. 7. cap. 13.

Anciently if a Clergy-man had been convicted of any Murder, Robbery, Burglary, &c. he was upon the demand of his Ordinary to be delivered over to him, where he was to make his Purgation according to the Rules of the Ecclesiastical Laws; and if he cleared himself, he was acquit * without any regard to his Conviction at Common Law; but if they adjudged him guilty, then he was to be degraded and kept in Prison: And this was confirmed to them by several Acts of Parliament. But this privilege was never allowed to them in this Kingdom in Treason, Petit Treason, or Sacrilege.

And a Delinquent might have had his Clergy *ad infinitum* till the Statute of 4 H. 7. And though this privilege of the Clergy be taken totally away in many cases by several Statutes, and in other cases Lay-men have it in common with the Clergy, if they can read as a Clergy-man; and though the delivery of them over to the Ordinary be totally abolished; yet the Clergy that are in holy Orders at this day, retain some of their ancient privileges, which the Lay-men are not capable of.

Co. 5. 50.
Bro. Corone 211.
2 Inst. 237.
Hob. 294.

For if a Clerk in Holy Orders be convicted (that is found guilty by the Petit Jury) of a Crime for which the benefit of the Clergy is allowable; at this day he shall not upon the allowance thereof be burned in the hand (as a Lay-man shall) upon the producing of his Orders; and if he have not them with him, the Court may, *ex gratia*, give him time to produce them till any other Assize or Sessions.

And

And a Clerk in Holy Orders, at this day, shall have his Clergy *ad infinitum*, from time to time, which no Lay-man can have above once.

Stat. 4 H. 7. 13.
28 H. 8. cap. 1.
1 E. 6. cap. 12.

The Goods of Clergy-men were by several Statutes exempted and freed from the Kings purveyance; but his Majesty having by Act of Parliament graciously released this duty, the Laity hath the same priviledge.

Stat. 3 E. 1. c. 1.
14 E. 3. c. 1.
18 E. 3. c. 4.
1 R. 2. c. 3.
Purveyance.

A Clergy-man shall not be amerced the higher in respect of his Church-Living or Benefice.

2 Inst. 627.
Not amerced for the Church-land.

Nor shall any Execution be executed upon the Goods of his Church, nor any Distress taken in the ancient Fee thereof; but otherwise it is of Lands of late purchase: And if he fear any such thing, he may have a Protection in Chancery *cum clausula*, (*Quia nolumus.*)

Regist. Orig. 289.
F.N.B. 29.
No execution upon the Goods of the Churches

If an Action of Trespas, Debt, Account or other Action, wherein Process of *Capias* lies, be brought against a Clerk in Holy Orders, and the Sheriff upon the Original return that the Defendant is *Clericus Beneficiatus nullum habens Laicum feodum ubi summoniri potest*; in this case the Plaintiff cannot have a *Capias* to arrest his body, but a Writ to the Bishop to compel him to appear.

2 Inst. 4.
No Capias against a Clerk.
9 E. 3. 30.
24 E. 3. 44.

And by a Statute made in the fiftieth year of E. 3. it is recited, *That as well divers Priests bearing the sweet Body of our Lord Jesus Christ to sick people, and their Clerks with them, as otherwise divers other persons of Holy Church, whilst they attend to Divine Services, in Churches, Church-yards, and other places dedicated to God, be sundry times taken and arrested by Authority Royal, and commandment of other Temporal Lords, in offence of God and Holy Church,*

50 E. 3. c. 5.

Church, and also in disturbance of such Divine Services: The King wills, and grants, and defends upon grievous forfeiture, that none do the same from henceforth; so as collusion or feigned cause be not found in any of the said persons of Holy Church in this behalf.

1 R.2. cap. 15. In the first year of R. 2. there was another Statute made to the like effect, with this added, *That the party convicted should be imprisoned, ransomed, and made agree with the party so arrested.*

Co. 12. 100.

So that if any Parson, Vicar, or Priest be arrested in going, staying, or returning to do Divine Service according to his duty, he may have an Action upon this Statute, and recover Damages, and have the party fined and imprisoned that made the Arrest, and the Clerk that is assistant may have the benefit of these Laws.

Priviledge of the Clergy confirmed by several Parliaments.

And note, That all the Priviledges of the Church of *England* are confirmed by the ancient and good Statute of *Magna Charta*: And so they were for the most part at the opening of every other Parliament after, till the beginning of the Reign of *H. 5.* How it began then to be discontinued by the negligence of the Clergy, or for what other cause, I know not.

And so having thus briefly mentioned many of the priviledges of the Clergy, whereof the Common Law takes notice, and to which they have right at this day, by the Laws and Statutes of this Realm, next I will shew the Reader what Priviledges they pretend unto, at, and by the Canon and Civil Law, which Mr. *Lindwood* reckons up in fourteen particulars:

Chap. Item statuimus verb. Clericali privilegio. Concil. Agatha. cap. 23.

Primo, in hoc quod non conveniantur coram Iudice seculari. Vide Concil. Agathi Canon. 23.

But

But this Priviledge has not been allowed to them here in *England*, and this was resolved in the 7th year of H. 8. in the case of one Dr. *Horsey*, Chancellour of the Bishop of *London*, of Kelway 182. which case, for the rarity, I will give the Reader a brief account, and it was thus :

One John Hunn a Merchant of London, had prosecuted Horsey in a Præmunire, whereupon Horsey caused Hunn to be arrested for suspicion of Heresia, and committed him to Lollards Tower, being the Bishop of London's Prison, and in a morning soon after the Prisoner Hunn was found dead and hanged in Prison, and it was given forth, that he had hanged himself in his girdle; but notwithstanding it was believed, that Horsey and the Goaler had murdered him. This coming to the Goalers ear, he took sanctuary at Westminster; upon which, and other great Circumstances, Horsey and the Goaler were by a Coroners Inquest in London, upon view of the Body, found guilty of the murder; and Horsey, as should seem, being in Orders, (I dare not say Holy) stood upon this Priviledge, not to be tried before Temporal Judges. And this being a Dispute between the Kings Prerogative and the Priviledge of the Church, the King at request of the Temporal Lords, and many of the Commons in Parliament, called before him at the Blackfryers divers of his Spiritual Council, Divines and Canonists; where the Clergy had one of their Counsel argued for their Priviledge; and Dr. Standish a learned Divine argued for the King; but the great offence taken was against the Abbot of Winchcomb, who in his Sermon preached at Paul's Cross in the time of the Parliament, had affirmed,

4 H.8. c.2.

ed, that the Act made 4. H. 8. (which took a way Clergy from Laicks in many capital Offences, but not from Clerks in Holy Orders) was against the Law of God, and priviledge of the Clergy, and that the Makers of the said Act had incurred the censures of the Church. Soon after Dr. Standish, who had argued for the King, was cited before the Convocation, and there charged with matters of Heresie arising from matters which had passed in his Argument, whereupon he made his application to the King, who being satisfied of the justness of his cause by Dr. Veisey, Dean of his Chappel, assembled all his Judges and Council Spiritual and Temporal, and divers of the Parliament Men; and after hearing of Divines, &c. the Judges declared, That those of the Convocation House that were at the awarding of the Citation against Dr. Standish, were in a *Præmunire*. And Fineux Chief Justice did declare in the name of all the Judges, That the Convention of Clerks before Temporal Judges had been maintained by many good and religious Kings of this Realm, and many good and holy Fathers of the Church had been obedient to it, and content with the Law of the Land in this point, &c. And Dr. Veisey gave the reason, Because the Canon in that point was never received or allowed in England. But the Clergy not being satisfied, the two Archbishops (who affirmed that they were bound * by Oath to maintain the priviledges of the Church) moved the King, that to avoid the † Censures of the Church, he would refer the matter to the Pope: But Henry the Eighth stoutly answered, That he by the Decree and Sufferance of God was King

* Nota.

† Nota.

King of England, and the Kings of England in time past had no Superior but God only; and therefore know, that he would maintain the right of his Crown and his Temporal Jurisdiction, as well in this point as all other. *And after Horsey (that all this while had been protected in the Archbishops House at Lambeth) the Bishops having made his peace with the King, appeared privately in the Kings Bench, and pleaded Not guilty to the Inquisition; and Erneley the Kings Attorney confessed the Plea, whereby Horsey was discharged (the more pity) and the Bishops promised to dismiss Standish; and so this point was settled against the Church, as 'twas very great reason.* I shall make no Comment upon the Case, though there are many things in it worth observation, and those that are not satisfied with this short account of this Case, may read it at large in *Kelway's Reports*, with all the Circumstances, and the Reader will not think his time ill spent, but with me praise God, that the King and Nation are freed of the Popish Bondage and Clergy.

2. The second Priviledge mentioned by *Lindwood*, is, *Quod verberans Clericum incidit in Canonem.*

This Priviledge is confirmed to the Clergy by the Statute of *Circumspecte Agatis*, that the Spiritual Court should have Jurisdiction, *de violenta manuum injectioe in Clericum*; but the ^{2 Inst. 292.} end of such Suit in the Spiritual Court is only, *pro salute animæ*, by Excommunication or Penance. And if a Clerk should sue in the Spiritual Court in point of damage, he runs himself in danger of a *Præmunire*; for the Ecclesiastical Judge may proceed only *ex officio* to

K

correct

correct the sin. But if the Clerk will in this Case recover damages, he must bring his Action at Common Law. And note, that such Suit in the *Spiritual Court* can only be sued by one in Holy Orders.

3. The third Priviledge *Lindwood* mentions is, *Quod non vocantur ad onera secularia*.

This Priviledge the Common Law allows; but it must be intended of such Charges as were at Common Law, but not of new Charges by Statute Law; in which the Clergy are not exempted, as hath been said before in the beginning of this Chapter.

And yet note, that the Clergy, till the late Rebellion, granted all their Subsidies in their Convocations, but in the late Acts of Parliament are taxed promiscuously.

4. The fourth priviledge *Lindwood* mentions, is, *Quod possunt facere Collegium ubi hoc Laicis non licet*.

Vide Dyer 267.
2^d. b. & 81. 2^d.
9 H.6. 16. b.
Co.4. 107. b.

Conc. Agatha
Can. 18.
Conc. Aurelian
Can. 18. q. 2.
Grat.
9 H.6. 16. b.
Dyer 81. p. 64.
& 267. p. 12.
Co.4. 107. b.

It is true, that before the Reformation the Clergy have erected Colledges, Abbies, Priories, and other Spiritual and Religious Corporations by the License of the Pope or the Bishop; but generally confirmed by the Kings: But without License of the Bishop of the Diocess, it was forbid to erect any such by several Canons; and by such License, I take it, a Layperson as well as a Clergy-man, might have erected a Colledge, &c. But here in *England* the Clergy never had greater Priviledge than the Laity in this matter, for no such Corporation could ever be erected here but by the Royal Authority.

5. The fifth Priviledge reckoned by *Lindwood*, is, *Quod possunt vendicare rem concessam Ecclesie*

Ecclesie ante deliberationem.

This Priviledge is of no use here in *England*, because the *Spiritual Courts* have not power to ^{2 Inst. 492.} determine the right or property of Land or Goods.

6. The sixth Priviledge is, *Quod eodem Privilegio gaudent persona & familia.*

This Priviledge holds no further here in *England*, than in such particulars as are mentioned in the former part of this Chapter.

7. The seventh Priviledge by *Lindwood* mentioned, is, *Quod facientes Statuta contra Clericos sunt ipso facto Excommunicati.*

He that would attempt to put this priviledge in Execution, would endanger to run himself in a great *Præmunire*; and many Statutes have been made against the Clergy in the height of Popery, as the Reader may find in many parts of this Book.

8. The eighth Priviledge is, *Quod soli Clerici possunt beneficium Ecclesiasticum obtinere.*

This is allowed without dispute.

9. The ninth is, *Quod per literas impetratas contra Laicum, cum clausula generali non potest Clericum conveniri.*

I must leave this to the *Civilians* to determine; for I must ingenuously acknowledge, I do not understand the meaning of this nor the next; which is,

10. *Quod in Civili nomina sportularum non tenentur dare nisi quatuor siliquas.*

Hæc tamen de jure Canonum non debentur, says the Author; and then proceeds,

11. *Quod de Acquisitis licet sint in potestate Patris possunt testari.*

This and the next Priviledges are in the Spiritual Law and Courts, and not opposed by the Common Law.

12. *Quod sine consensu Patris agere possunt pro rebus suis recuperandis.*

13. The thirteenth I must leave as I find it; and it is, *Quod non Pignorari.*

14. The last is, *Quod si sciente Domino servus efficiatur Clericus liberatur à Domini potestate.*

I do not find any such Priviledge allowed in *England*, but it may be reasonable enough; these four last are only known to the Civilians, to whom I leave them.

And so much for the Priviledge of the Clergy by the Canon and Civil Laws: But I conceive they receive more benefit by those the Common Law allows to them.

CHAP. XII.

The Twelfth Chapter shews how the Law stands concerning Churches, Chappels, and Church-yards, in whom the Freehold is, and how to be repaired, and concerning Seats, Burials, Tombs, Coats of Arms, and other Ensigns of Honour in memory of the dead, and of Church Ornaments, and at whose Charge to be provided, and what remedy against those that shall commit any Trespass in the Church, Church-yard, or in breaking up Tombs, taking, carrying away, or imbezeling any of the Goods or Ornaments of the Church, &c.

THe word *Church* is taken from the Saxon word *Cīpc*, or *Cīpic*, which name is still retained in the North parts of *England*, and in *Scotland*, by changing the *C* into *K*, as was usual with the English Saxons; in Latin *Ecclesia*, or *Basilica*, from the Greeks; and it hath in the Holy Scriptures several acceptations; for sometimes it is taken for one Family of the faithful People of God, as *1 Cor. 16. 19.* *Rom. 16. 4, 5.* Sometimes for the Christian People of one Country or Province, *Rom. 6. 23.* Sometimes a Council or Synod is taken for the Church, *Mat. 18. 17.* and sometimes, *pro universa fidelium per totum terrarum orbem diffusorum*

Church undedicitur.

The several acceptations.

The material Church, quid.

*Distinctio 1.
Nemo Ecclesi-
am.*

*The manner of
founding of
Churches.*

*Causa 16. q. 1.
quicunque q. 3.
Lator Concil.
Calcedon 1.
can. 4.*

** Ut Major Ec-
clesiæ per cir-
cuitum 40. pas-
sus habeat. Ca-
pella vero vel*

*minoris Ecclesiæ, 30. c. 17. q. 4. de consecratione distinct. 1. nemo Eccle-
siam. See Sir Tho. Ridley's View of the Civil and Ecclesiastical Laws, 191.
more of this matter.*

*3 Inst. 201.
Who may build
a Church.*

3 Inst. 203.

fasorum multitudine: And sometimes for the *Material Church*, as 1 Cor. 11. 18. and 14. 34. And that is the Church of which I am now to discourse, *That is a Building made of Stone, Brick, Timber, and other Materials; for the meeting of Christians to hear the Word of God read, and preached, and to joyn in Prayer, and other Religious Duties; built by the Licence of that Bishop in whose Diocess the same is erected, and by him consecrated to that Service, an Office peculiarly belonging to the Office and Dignity of the Bishop.*

The ancient manner of Founding Churches, was, after the Founders had made their application to the Bishop of the Diocess, and had his Licence, the Bishop, or his Commissioners, set up a Cross, and set forth the * Church-yard, where the Church was to be built, and then the Founders might proceed in the Building of the Church, and when the Church was finished, the Bishop was to consecrate it, but not till it was endowed, and before the Sacraments were not to be administred in it.

But by the Common Law and Custom of England, any good Christian may build a Church without the Licence of the Bishop, which was confirmed by the Pope at the request of King *John*, with this qualification, so that it were with the Bishops consent, and not prejudicial to any ancient Churches: But however the Law takes no notice of them as Churches, nor have they any priviledge, till they be consecrated by the Bishop. And

And in some cases, though a Church have been consecrated, it must be re-consecrated, as in case any Homicide, Adultery, or Fornication shall be committed in it, or the Church burned; but the rebuilding of the Walls, if the Altar (that is the Communion Table) were not removed, requires no new Consecration, nor Churches consecrated by Hereticks, *In fide Sanctæ Trinitatis in forma Ecclesiæ*, are not again to be consecrated.

Where a Church shall be re-consecrated. Conc. Nicæ pars 3. distinct. 1. Ecclesiis semel. Ibid. Si motum. Ibid.

The Church consists of three principal parts, that is, the Belfrey, or Steeple, the Body of the Church with the Isles, and publick Chappels, and the Chancel.

Division.

The freehold of the whole Church, and Church-yard, are in the Parson or Rector, and therefore the Parson may have an Action of Trespass against any Body that shall do any trespassable act in the Church, or Church-yard, as in breaking Seats annexed to the Church, in breaking the Windows, cutting the Trees, or taking away the Leads, or any of the Materials of the Church, or for breaking Windows, the party may be indicted, and fined, and bound to his good behaviour.

In whom the Freehold is. 11 H. 4. 12. 3. 21 H. 7. 21. b. Cro. Jac. 567. 8 H. 6. 9. 8 H. 7. 12. 38 H. 6. 19. 15 H. 7. 8. 8 H. 6. 9. 8 H. 7. 12. 36 H. 6. 19. 15 H. 7. 8. Noy 104.

The Body of the Church, the Belfrey, and all publick and common Chappels, within, or adjoining to the Church, are by the Laws and Custom of *England*, to be re-edified, maintained, and repaired, at the charge of the Parishioners and Landholders within the Parish, and herein the Common Law and Custom of *England* is kinder to the Clergy, then in other Countries, where the whole charge lyes upon the Rector.

Who is to repair Churches. 2 Inst. 553. Coke 5. 67. b. Stah. tit. acc. compt.

*How Churches
were anciently
repaired.*

C. 10. q. 3.

Quia vero &
placuit ut nul-
lus Conc. Bra-
ga. cap. 2.
Cathedraicum
how it came
due.

Anciently the Bishops had a third part of the Tythes and Offerings, in some places a moiety, and in some places a fourth part, and in consideration thereof were bound to the repair of the whole Church; but upon a Release of this Interest to the Rectors, they were acquitted of the Repairs of the Churches, and had only two shillings for the Honour of the Bishops Chair, in lieu thereof, called *Cathedraicum*, which duty, as I take it, was never paid in *England*; and the reason might be, because the Bishops here were never charged with the repair of the Churches, and had therefore no share in the Offerings, *tamen inde quaere.*

*Who is to raise
mony for the re-
pair of the
Church.*

The Churchwardens are to raise the mony for the repair of the Church, and are to make the Repairs, and for the raising monies to that purpose, they are to make their Levies in this manner.

*The manner to
make a levy for
the Church.*

Co. 5. 67. b.

The Sunday before the Churchwardens design to make a levy, they are to give publick notice in the Parish Church, immediately after Common Prayer, of the time and place designed for making the intended Levy, and then at the time and place appointed; the Churchwardens, and the Parishioners, there met, are to consider what Sum of Mony will be necessary to be raised for such Repairs, as shall be then needful; and after they, or the Major part of the Parishioners, there met, have agreed what Sum is fit to be raised, then they, or the Major part there present are to proceed, and make an equal levy upon all the Parishioners and Land-holders within the Parish, and if any of the Parishioners refuse to pay their

*How it is to be
recovered.*

their Rates, being demanded by the Churchwardens, they are to be sued for, and to be recovered in the Ecclesiastical Court, and not elsewhere.

But in case the Bounds of the Parish come in dispute in the Ecclesiastical Court, that is, if the party assented aver that the Land for which he is assented lies in another Parish, and not in the Parish where it is assented, if the party be contentious he may have a Prohibition, and try it at Common Law.

And if the Parishioners, when they come together at such meeting, refuse or neglect to joyn in making such Assessment, or refuse to meet, I conceive the Churchwardens, having just cause for such Assessment, may proceed alone: For if the Churchwardens shall neglect to make the Repairs when duly admonished by those that have the power to visit, within a certain time the Ordinary or other Visitors shall limit, they may proceed against the Churchwardens by Ecclesiastical Censures to compel them to do it: And the Law never compels any body to do a thing they have not means to effect. And it should seem in this case, that the Parishioners are likewise punishable by the Ecclesiastical Judge for their neglect in this kind.

But some are of opinion that the Churchwardens cannot proceed alone, but must compel the Parishioners to do it by Ecclesiastical Censures: *Ideo quare.*

And it should seem that by custom Lands in a forreign Parish may be charged to the repair of the Church.

Stat. Circum-
specte Agatis.
13 E. 1.

Regist. or. 44. b.
Briton. l. 1. c. 4.

*Prohibition lies
where the
Bounds of the
Parish are con-
troverted.*

Rolls 2. 291.
l. 1. 5. 4.

*What to be done
if the Parish-
ioners will not
make a Levy.*
Cap. Archidia-
coni verbo Sub-
pœna.

Hetley 61.

Rolls 2 308.
v. 20.

And

How to be relieved against unequal Assessments. Rolls 2. 289. H. 6. 5. 67. 2. Landlords not taxable for their Rents.

And if any person find himself aggrieved at the inequality of any such Assessment, his Appeal is to the Ecclesiastical Judge, who is to see right done.

Every one that holds any Lands within the Parish, is in Judgment of Law a Parishioner, chargeable to this Tax; but the Landlord, in respect of the Rent he receives, is not chargeable to the repair of the Church; nor in that respect can be said a Parishioner.

And these Levies are not chargeable upon the Land, but upon the person in respect of the Land, for the more equality and indifferency.

But there has been some question made, where one that holds Lands in one Parish, and resides in another, may be charged to the Ornaments of the Parish Church where he doth not reside:

And some Opinions have been, that Forreigners were only chargeable to the Shell of the Church, but not to Bells, Seats, or Ornaments.

But I conceive the Law to be clear otherwise, and that the Forreigner that holds Lands in the Parish, is as much obliged to pay towards the Bells, Seats, and Ornaments, as to the repair of the Church; otherwise there would be great confusion in making several Levies, the one for the repair of the Church, the other for the Ornaments, which I have never observed to be practised within my knowledge.

Land-holders are, and the reasons.

Secondly, It is possible that all, or the greatest part of the Land in a Parish may be held by Forreigners, and it were unreasonable in such case to lay the whole charge upon the Inhabitants, which may be but a poor Shepheard.

Thirdly, The reason alledged against this charge upon the Forreigners, is chiefly because the

the Forreigner has no benefit by the Bells, Seats, and Ornaments.

Which receives an answer in *Jeofferies Case*, Co. 5. 67. b. for there it is resolved, that Land-holders, that live in a Forreign Parish, are in Judgment of Law Inhabitants, and Parishioners, as well in the Parish where they hold Lands, as where they reside; and may come to the Parish meetings, and have Votes there as well as others.

For Authorities in the Case it is clear by the Canon, That all Land-holders *in ipsis degentes, vel alibi, ad quævis onera Parochianos ipsos ipsam Ecclesiam & Ornamenta ejusdem concernentia, & eis in his de jure vel consuetudine incumbentia, consideratis possessionem & reddituum hujusmodi quantitativibus, cum cæteris parochianis Ecclesiarum prædictarum, quoties opus fuerit, contribuere teneantur.* Cap. licet parochiani.

And I have seen a Report under the hand of *Authorities*, Mr. Latch, that it was resolved in *Willymot's case*, H. 6. Jac. B. R. and in *Chester's case*, 10 Jac. That a Forreigner that held Lands in another Parish wherein he did not reside, was as much chargeable to the ancient Ornaments of the Church, as Bells, Seats, &c. as those that lived in the Parish; but that such Land-holders could not be charged to new Bells, Organs, &c.

And Mr. *Bulstrode* reports a case about the same time, That the Chief Justice *Fleming*, and Mr. Justice *Williams* were of the same Opinion, and gave this reason, That the Forreigner might come to Church if he pleased. And having said thus much to this matter, I must leave it a *Quære* amongst these diversities of Opinions. Bulst. 20. Quære.

It

Rolls 2.291. k. It hath been resolved that the major part of the Parishioners may make a Levy for new Bells or Organs.

4. Additions Po-
pham 197.

*If some should
be omitted in a
Levy.*

Rolls 2.291. k.
3. contra.

Ibid.290. H.10.

But if in the making a Levy for the repair of the Church, some of the Parishioners or Land-holders are omitted, if the Churchwardens shall sue upon such a Levy, a Prohibition lies in the case, *tamen quære.*

Though generally all the Parishioners and Land-holders within a Parish ought to be taxed towards the repair of the Church, as has been said; yet that Rule admits some Exceptions.

*Who may be
freed from these
Levies.*

Caplicet paro-
chiani.

*The Rector and
Vicar.*

The Founder.
H.3. Car.1. B.R.
per Henden.

*Those of a Chap-
pelry.*

Hob.67.

Rolls 2. 290.

I. 1 & 2.

For *first*, The Rectory or Vicarage which is derived out of it are not chargeable to the repair of the Body of the Church, Steeple, publick Chappels or Ornaments, being at the whole charge of repairing the Chancel.

Secondly, The Founder of the Church may prescribe, that in respect of the Foundation, he and his Tenants have been freed from the charge of repairing the Church.

Thirdly, It hath been resolved that the Inhabitants of a Chappelry may prescribe that in consideration that they have time out of mind paid Three shillings four pence, to the repair of the Mother Church, or at their own charge repaired a certain part of the Mother Church, they have been freed from all other charges about the repair thereof.

Noy 41.

contra Rolls 2.

290. I. 1.

Rolls 2.311. a.

1.

Marsh.91.

Hob.67.

But a Prescription by the Inhabitants of a Chappelry, that because they have time out of mind repaired some part of the Fence of the Church-yard, they have been freed from the repair of the Mother Church, has been disallowed.

And yet there hath been some Resolutions, that the Inhabitants of a Chappelry may prescribe, that in consideration they have repaired their own Chappel time out of mind at their own charge, that they have been freed from the charge of repairing the Mother Church; but there being Opinions to the contrary, I must leave it as a *Quære*: But the better Opinion seems against such Prescription.

If a Petit Chapman take a standing weekly in the Market to sell his Wares, he shall not for this be charged to the repair of the Church.

A Prescription that the Arable Lands within a Parish had time out of mind been only charged to the repair of the Church, has been disallowed, for the Houses are as well chargeable as the Land.

If two Churches be united, the repairs of the several Churches shall be made as they were before the union.

And so much concerning the repair of Parish Churches and publick Chappels annexed to them; and as for the repair of other Chappels, I shall defer till I come to speak of Chappels.

I did purposely omit in the former Edition of this Book to speak of the repair of Chancels, lest I should have raised a question I could not determine; but the point has lately come in question judicially, and I shall tell the Reader now what I have learned on this subject.

Regularly the repair of the Chancel, both by the Canon Law and Custom of *England*, is to be made by the Rector or Parson of the Parish, which he is compellable to do by Ecclesiastical Censure, Suspension and Sequestration. But the great question in this case is, where there

Rolls 2. 290.
H. 7 and 8.
contra Bulst. 1.
16, 17. according, and so it was resolved
P. 42 El. B. R.
between the Chappelry of Coxwell and Church of Faringdon in Berkshire.
Quære.
Rolls 2. 289.
H. 5. Andrews versus Hutton.
H. 4 Car. 1.
Hetley 133.

Hob. 67.
Churches united how to be repaired.

P.29 Car.2. ro.
372. C.B.

is an Impropiator, how to compel him to do it, the Rectories and Tythes in that case being become Lay-fee; but this point coming lately in question in the *Common Pleas* between *Walwin* and *Awbry*, it was agreed to both by the Counsel that argued on both sides, and the whole Court; First, That the Impropiators are chargeable with the repair of the Chancels. Secondly, That they may in the Ecclesiastical Courts be compelled by Ecclesiastical Censures to repair them: But the great question was, Whether the Bishop might sequester the Tythes, they being now become Lay-fee, which point by reason of some miscarriage in the Pleadings, did not receive a determination; many Presidents were shewed in point, that impropriate Tythe had been sequestred by the Ecclesiastical Judge in this case, both before and since the War, and the better Opinion seemed to be for the Sequestration, it being agreed that the Ecclesiastical Court has Jurisdiction of the cause, and that being one of the ordinary Process's of that Court.

Seats in Churches.

The next thing to be spoken of is the Seats in Churches; built for the ease of the Parishioners to sit, kneel, and stand in, for the hearing the Word of God read and preached, and joyning in Prayers; and other Religious Duties, with the other Parishioners.

By whom to be repaired.

These are to be built and repaired as the Church is to be, at the general charge of the Parishioners, unless any particular person be chargeable to do the same by Prescription.

In what manner to be built.

The Seats ought to be regular; and of a moderate height, that the behaviour of the Parishioners may the better be observed; and if any

any body of their own heads shall presume to build any Seat in the Church, without the Licence of the Ordinary, or consent of the Minister and Churchwardens, or in any inconvenient place, or too high, it may be pulled down by order from the Bishop, or his Arch-Deacon, or by the * Churchwardens, by the consent of the Parson, for the Freehold of the Church, and all things annex to it, are in the Parson, and therefore if any one presume to cut or pull down any Seat annexed to the Church, he may have an Action of Trespass against the Misdower (though he formerly set it up) if he do it without his consent, or order from the Ordinary; but if the Seat be set loose, he that built it may remove it at his pleasure, as I conceive.

Who may build Seats.

* Dantries Case.

T.2 Jac.C.B.

11 H.4.12.a.

Cro. Jac. 667.

21 H.7. 21.b.

Seats cut, or pull'd down, who shall have the Materials.

8 H.7.12.

But though the Freehold of the Church be in the Parson, yet he cannot pull down any of the Seats anciently erected, or of late erected, but by Licence from the Bishop, or by the consent of the Churchwardens.

What the Parson may do in the Church.

If any Seats annex to the Church be pull'd down, the property of the Materials is in the Parson, and he may make use of them if they were placed in the Church by any one of his own head, without legal Authority; but for the Seats erected by the Parishioners by good Authority, I take it, the property of the Materials upon removal is in the Parishioners.

Noy 108.

The Churchwardens, with the Approbation of the Parson, may by Custom dispose of the common Seats, built at the charge of the Parish, and place the Parishioners therein, according to their degrees and qualities; but no such custom can exclude the Bishop from a temporary disposition

Who may dispose of the Seats.

Rolls 2. 288.

g.1.2.

3 Poph. 140.

Hob. 69.

Gratray & alii
versus Beard-
ley. H. 30 & 31
Car. 2. B. R.
Rolls 2. 288.
g. 5.

Holt. vers. Ellys.
Noy 133.

Cro. Jac. 567.
Co. 12. 106.

3 Inst. 202.
Noy 129.

Buxton versus
Bateman. T. 4
Car. 2. B. R.
Rot. 463.

fition of such Seats, but the Bishop cannot grant Seats to a man and his Heirs, because they must be attendant to the Houses.

But the Bishop has no power to dispose of the Seats in any private Chappel next to the Church that is not maintained and repaired at the Parish charge.

The Seats in the Chancel are properly in the dispose of the Rector or Parson; but it should seem that a Parishioner may prescribe for a Seat there.

And note, that all that has been said before of Seats, must be intended of such Seats as no particular Parishioner has a right to by prescription; for wheresoever any Parishioner is owner of an ancient Messuage, to which any Seat has been used by prescription time out of mind, there the Ordinary, Parson or Churchwardens have nothing to do in the disposing of such Seat.

About prescriptions for Seats in Churches, the Law has been controverted; for sometimes it has been held, that the Owner of an ancient Messuage might prescribe to have a Seat in the Isle of a Church, which himself repaired; after it went further for a Seat in the Body of the Church, which was repaired by him that prescribed to have it.

But the Law is now settled in this Case, that a man that is Owner of an Ancient Messuage, may prescribe for a Seat in any part of the Parish Church, within which Parish such Messuage stands, although he have not used to repair it: And this was resolved in an Action of the Case brought by *Buxton*, against one *Bateman*, for disturbing him in a Quire, in the Body of *Tolgreave*

greave Church in Derbyshire, which *Buxton* claimed by prescription to his House, by all the Judges of the *Kings Bench*, and after affirmed in a Writ of Error in the *Exchequer Chamber*, so that this point is now settled by all the Judges of *England*.

And as a man may prescribe for a whole Seat in a Church, Isle, or Quire; so he may prescribe for the first, second, or other sitting, or place in a Seat; and in all these Cases of prescriptions, the Ordinary has nothing to do; but the matter is solely determinable at Common Law.

Prescription for burying.
Carleton versus Hutton.
Noy 78.

And as a man may prescribe to have a Quire, Isle, or Seat in a Church, so he may prescribe to an Ancient Messuage to have the sole Burial of his Dead, in such Isle, Quire, or place in the Church.

Co. Entries 3.b.

Anciently none were admitted to be buried in the Church but Priests, and those that were of clear life and conversation.

* There was likewise anciently a payment due for those that were buried, called *Symbolum animæ*, or *pecunia Sepulchralis*; and this was paid though the Body was buried in another Parish.

Who may be buried in the Church.
Spelmans Conc. 590.n 9.45 1.n. 29.545.
* Ibid. 517.
Payment for Burials.

But by the Canon Law, *Interdictum est omnibus Christianis terram mortuis vendere & debitam sepulturam denegare*. But this must be intended in the Church-yard; for by another Canon in the same Council, it is expressly decreed, *Quod nullus Laicus in Ecclesia sepeliatur nisi in Cœmiterio*.

Nothing to be paid for burials.
Conc. Triburicensis.
Can. 16.
Can. 17.

And by the same Council it is decreed, That *ubi decimas persolvebat vivus, sepeliatur mortuus*.

Where one shall be buried.
Can. 15.

No Church-
yards in Cities.
Spelmans Con-
cil. 290.

Anciently there were no Church-yards in Cities, nor burying of the dead, so that the Archbishop of *Canterbury* could not be buried in his own Cathedral, till *Cuthbert* Archbishop of *Canterbury* obtained Licence from the King, that the Archbishops might be buried in the Cathedral at *Canterbury*.

2 Inst. 489.
Co. 6. 67.

Who may be
buried in the
Church-yard.

13. q. 2. quæstia
& tribus, & se-
peliendum.

Who in the
Church.

The Church yards are of common right to be fenced by the Parishioners.

By the Custom of *England*, every person (except such as are afterwards excepted) may at this day be buried in the Church-yard of the Parish where he dies, without paying any thing for breaking the Soil.

Spelmans Con-
cil. 564. leges
Canuti, cap. 20.

And by the Custom of *England*, every Parishioner (except as hereafter is excepted) may be buried in any common part of the Church or Chancel, paying the accustomed Fee to the Parson for breaking the Soil, which for most part is three shillings and four pence in the Church, and six shillings and eight pence in the Chancel; and this is only for the breaking of the floor, and that's the reason that in some places the Churchwardens have the Fee for breaking up the Church, though of common right it belongs to the Parson; and in this the custom must be observed.

Who may set up
Tombs.

3 Inst. 202.

What remedy if
broken.

Sir *Edward Coke* is of opinion, That any person may erect a Tomb or Monument for the dead in the Church, Chancel, publick Chapels, or Church-yards, in a convenient place, (but I conceive it must be intended by Licence of the Bishop, or consent of the Parson and Churchwardens:) And that if any body break it, the party that set it there may have an Action against those that break or pull it up, or de-

face

face it : And after the death of those that set it, the Heir shall have the Action. More 878.
3 Inst. 202..

Some persons are denied Christian burial, and therefore such persons are excepted in what is said before, and may not be buried in the Church or Church-yard, without special Licence from the Bishop. Who may not be buried in the Church, or Church-yard.
13. q. 2. placuit
& ibid. fatendum, & ibid. quibus.

That is, such persons as Murder themselves, dye Excommunicated, those that dye in any mortal Sin, Sacrilegious persons and Usurers ; but of Usurers the Canon holds not in *England*.

For Grave-stones, Winding-sheets, Coats of Arms, Penons, or other Ensigns of Honour, hanged up, laid or placed in memory of the dead, the property remains in the Executors, and they may have Actions against such as break, deface, or carry them away, or an Appeal of Felony. Grave-stones, &c. More 878.
9 E. 4. 14. a..
Co. 12. 113.
3 Inst. 110.
& 202.

The property of the Bells, Books, and other Ornaments of the Church, is in the Parishioners, and in the custody of the Churchwardens, who may maintain an Action of Trespass against such as shall wrongfully take them away, and the Successors may sue this Action for the taking away in the time of their Predecessors, and the damages recovered shall be to the use of the Parishioners, but they may declare * *ad dampnum ipsorum, or dampnum parochianorum*, and either way good, and the release of one Churchwarden † shall not bar his Companion ; † Cro. Jac. 23. or they may have an Appeal of Robbery ; for stealing the Goods of the Church. Whose the Bells &c. are.
12 H. 7. 27. b..
37 H. 6. 32.
8 H. 5. 4.
10 H. 4. 9.
Who may have an Action for taking them.
* ad Cro. El. 179.
8 E. 4. 6. b.

By the Laws of *England* in the time of Property change, pery, if a Stranger had taken my Goods, and offered them to an Image in a consecrated Church, this had made as good a change of ed by Offerings.
34 H. 6. 10.
Co. 10. 91. a..

the property of my Goods, as though I had sold them in a Market overt ; but if I found the Goods after in the Wrong-doers possession , I might take them again.

Goods may be given to the Church.

11 H. 4. 12.

Cro.Car. 343.

A man at this day may give or dedicate Goods to Gods Service in such a Church , and deliver them into the custody of the Churchwardens, and thereby the property is immediately changed, and the Churchwardens may have an Action for the taking them away.

Reverence to the Church and Church-yard.

There has always been great reverence given to Churches and Church-yards , and other places consecrated to Gods Service ; and anciently Churches and Church-yards were Sanctuaries for Traitors, Murderers, Robbers, Thieves, and other Malefactors ; and many Laws were made for the regulation of them, and restraining that priviledge, till at last Sanctuaries, with great reason, were totally taken away ; for they were not used like the Cities of Refuge under the Law, for those that unawares killed others, but for all People, be the Crime never so horrid.

Numb. 35. v. 11.

Where Sanctuaries were taken away.

Stat. 26 H. 8.

cap. 13.

St. 27 H. 8. c. 12.

* Frustra implorat Ecclesie auxilium

qui in ipsam

deliquit, c. 17.

q. 4. Ad Episcopos.

St. 21 Jac. c. 28.

Sanctuaries finally taken away.

In the 26 H. 8. Sanctuaries were taken away in High Treason, in the 27th of H. 8. they were taken away in wilful Murder, Rape, Burglary, Robbery in the High-way, or in any House, or in any * Church or Chappel, and in wilful burning any House or Barn with Corn.

But by a Statute made in the 21 year of King James, they were finally taken away, and abolished, they having too long continued for the protection of the greatest Malefactors, a thing unfit for hallowed places.

But that Churches and Church-yards should not be prophanelly used, is evident from the example

ample of our Saviour, who cast out those that bought and sold in the Temple, and overthrew the Tables of the Money-changers, and the Seats of them that sold Doves; telling them, *My House shall be called of all Nations the House of Prayer, but you have made it a Den of Thieves.* Mark 11.v.15.

And in the Council of Mentz it is forbid, *Ut in Ecclesiis aut in domibus Ecclesiarum vel *atriis placita secularia minime fiant.* Courts not to be kept in Churches or Church-yards, Can. 40.

And by a Canon made in the sixth General Synod at Constant. buying and selling is forbidden in Churches and Church-yards, wherewith a Canon of our own, made in the time of King James agrees. *Fairs and Markets not to be in Churches or Church-yards. Can. 76.*

And by a Statute made in the 13th year of E. 1. it is enacted, *That Fairs or Markets should not be kept in Churches or Church-yards, for the honour of the Church.* Can. 89. Stat. Winton.

There is a Canon to this effect, *Quod nullus secularium, nec in Ecclesia, nec infra atrium ipsius Ecclesie, quaecumq; scandalum, aut similitates excitare presumat, nec arma trahere, aut quemcunque ad vulnerandum, aut interficiendum appetere, quod si fecerit à communione privetur.* Conc. Cabilonensis, Can. 17. No fighting, &c. in Churches and Church-yards.

And to the same effect there was a Statute made in the fifth year of E. 6. That if any Parson, &c. should by words openly quarrel, chide, or brawl, in any Church or Church-yard, that then it should be lawful for the Ordinary of the place, the matter of Fact being proved by two Witnesses, to suspend a Layperson, *ab ingressu Ecclesie*, and a Clerk from the exercise of his Office as long as he shall think fit, according to the quality of the Offence. Ed. 6. cap. 4.

And that if any person shall smite or lay violent

lent hands upon any other in the Church or Church-yard, then *ipso facto*, every such person shall be deemed excommunicate.

No striking or
drawing Wea-
pons in the
Church or
Church-yard.

And if any person, &c. maliciously strike another in any Church or Church-yard, with any Weapon, or shall draw any Weapon in any Church or Church-yard, to the intent to strike any other therewith, the party thereof convicted by Verdict, or two lawful Witnesses, before the Justices of Assize, Oyer and Terminer, or Justices of the Peace in their Sessions, shall have one of his Ears cut off; and if he have no ears, then to be marked in the Cheek with a hot Iron, with the Letter F. & *ipso facto* excommunicate.

Ipso Facto.

Dyer 275.p.48.

Lindwood, cap.

*Quia incontin-
entia verb. ip.
so facto.*

De son assault

demesne, No

Plea in a

Church, &c.

Cro. Jac. 367.

It may be a question what the meaning of these words, *ipso facto* Excommunicate in this Act shall be understood, whether it shall be without Sentence declaratory, or no, which is made a *Quare* in *Dyer*, but by the Canonists, there must be a Sentence declaratory.

And the Law so abhors violence and force to be used in Churches and Church-yards, that it will not admit a man to strike again in his own defence in a Church or Church-yard, and therefore the Plea of *de son assault demesne*, is not allowed for a good Plea in that Case.

Arrest in Churches, &c. punishable. Cro. Car. 602.

Ways through Churches, &c.

18 E. 4. 8. 2.

1 E. 6. cap. 4.

Clergy taken away in Sacrilege.

And to make an Arrest in a Church or Church-yard, immediately after Divine Service, when it may be done elsewhere, is Indictable and Finable.

And yet it hath been held, that there may be a way through a Church or Church-yard.

By the Statute of 1 E. 6. the benefit of the Clergy is taken away from such as steal any Goods out of any Church or Chappel. For the

the punishment of such as disturb the Minister in the Church, whilst he is reading Divine Service, or arresting the Minister whilst he is attending Divine Service, see in the 11th Chapter before, and *Stat. 50 E. 3. cap. 5.* and 1 R. 2. cap. 15.

And so much for the Privildges of Churches and Church-yards.

The last thing I have to speak relating to Churches, is the Officers belonging to the same, which in time of Popery were many, as *Ostia-
rii, Lectores, Exorcistæ, Acolythi, Psalmistæ, Cantores, &c.* He that minds to know the several Duties of all these Officers, or Orders, may satisfy himself in *Bellarmines* Disputations, or in *Gratian*, with the manner of their Ordinations.

Offices of the Church.

Kitchin 194.

De Clericis lib. 1. cap. 13.

Distinct. 23. cap.

Quorundam

Clericorum & dist. 25. perlectus.

Ostarius may be taken for a Clerk or Sexton.

Amongst these the Churchwardens and Parish Clerk or Sexton, who perform several of these Offices, are not reckoned, and those are now the only Officers of the Church of England, and of whom I am now to speak.

Churchwardens Office.

Doct. & Stud. 118.

The Office of the Churchwardens is to take care of the repair of the Church, and has the ordering of the Bells and Seats, and is to provide all Books and Ornaments belonging to the Church, and in his custody, and in their charge are all the Goods of the Church, and they are to provide Bread and Wine for the Communion, and to see there be a decent Communion Table, with a Table-cloth and Carpet, and Flagon, Plate, and Bowl of Silver, Gold, or Pewter, for the Service of the Church, when the Communion is Administred; they are to make Levies, and raise Money for the doing of all this in such manner as is before directed;

8 H. 5. 4.

8 E.4.6.

and at the end of their Office they are to give an accompt of their Receipts, and disbursements to the Parishioners, and what remains in their hands upon such accompt, with all the Goods of the Church in their custodies, they are to deliver over to their Successors. There are many things more belong to their Office, but so well known, I need not mention them.

*By whom to be
chosen.*

Can.89.

These Officers by a Canon made in the time of King *James*, are to be chosen by the Minister and Parishioners; but if they cannot agree of the persons, then the Parson, Vicar, or Curate, is to chuse one, and the Parishioners the other; but where the custom has been to chuse them all by the Parishioners, without the Minister, the custom must be observed, notwithstanding the Canon.

26 H. 8.6.

Rolls 2.287.f.
50.

*Sidemen their
Office.*

Can.90.

There were other Officers called Side-men, but they are almost laid aside; their Office is to assist the Churchwardens in doing their Duties, and they were to take care that no body should loiter or talk in the Churchyard or Church-porch, and to see that the Parishioners frequented the Church, &c.

*The Clerks Of-
fice.*

Can. Jac. 91.

The Clerk or Sexton is to be chosen by the Parson or Vicar, or in their absence by the Minister, who the Sunday after such Election, is by him that makes the Election to be declared, who is Elected.

*How to be
elected.*

— The party so elected ought at least to be twenty years of Age, of honest Life and Conversation, and one that can write, read, and sing: His Office is to assist the Minister at Prayers, and to attend him, and to keep the Church and Seats clean, and has the keeping of the Keys of the Church to that purpose, and is to
ring

ring to Prayer, and to do many other things, which by custom belong to his Office to do. Cro. Car. 589. Rolls 2.286.f.

But if such Parish Clerk have time out of mind been chosen by the Parishioners, he must be so still, notwithstanding the Canon. 42. Parsons Law 116.

And so much for Churches, I shall next proceed to the Chappels.

Chappels in Latin *Cappellæ*, about which denomination I find great diversity of Opinions amongst the Learned; some conceiving it takes its name *à capiendo Laicos*; others are of opinion they took that name *à Capra*, because anciently they were covered with Goat-skins: others think they take their name *à cappa Sancti Martini*, because anciently the Kings of France, when they went to the Wars carried that Cap along with them, which was kept under a Tent, and thence called *Capella*: others have thought it is taken for a Chest or Repository, wherein the Relicks of Saints were preserved.

Amongst this variety of Opinions I shall beg the Readers pardon to put in my own amongst the rest, being not well satisfied with any of these: A Chappel is a Church in a smaller character, and therefore I imagine it might be called *Capella* from the littleness of its content or capacity to receive persons, it differing nothing from a Church but in the dimension or content, and that the Church is the Elder Sister. Chappel undedicatur. Cowel, Minshew, Spelman. Hoc verbo. Ella, in the end of a word signifying little, and Cap. of capio to receive. So a Chappel is of little receipt in respect of the Mother Church.

Of Chappels there are three sorts; Free Division of Chappels, Chappels of Ease, and private Chappels.

What those Chappels were that were called Free Chappels, I find likewise some difference of Opinions; for some have been of Opinion, that they were Chappels founded in Parish Churches, Minshew, Cowel in free Chappels.

Churches, and endowed by the Founder, and made free to all People to come, and therefore called free Chappels: others were of Opinion, That they were Chappels built by the Kings of this Realm, or by their License, and exempted from the Visitation of the Ordinary: others take them for Donatives, and therefore called free Chappels, because they were freely given.

Stat. 1 E. 6. c. 14.

These free Chappels, whatsoever they were, were all given to the King in the first year of E. 6. except some few that are excepted in the Acts of Parliament by which they were given; or such as are founded by the King, or his Licence, since the dissolution: for it is agreed on all hands, That the King may erect a free Chapel, and free it from the Jurisdiction of the Ordinary, or may License a Subject so to do.

Chappels of Ease, Parochial, and not Parochial, the difference.

1 Inst. 362.

Chappels of Ease, some of them have Parochial rights to Christen and Bury, and are therefore called Parochial Chappels, by way of distinction from others that have no such privilege; and these differ in nothing from Churches, but in the want of Rectories and Indowments, the Mother being to be served before the Daughter.

Those Chappels of Ease, which are not Parochial, cannot Bury or Christen, but are only used for the ease of the Parishioners to hear the Word of God read and preacht, and to joyn in Prayer.

Chappels how to be repaired. &c.

Chappels have like Officers for the most part as Churches have, distinguished only in name, and these Chappels must be consecrated by the Bishop as Churches are; and the repairs must be made by Assessments on the Inhabitants and Land-holders within the Chappelry in the same manner

manner as for the repair of Churches, and are visitable by the Ordinary, and the like Appeals to the Ordinary for unequal Assessments; but all this must be intended of ancient Chappels, and where this course hath been used: for if there be Land given for the repair of them, or any Land or Estate charged by prescription to the repairs of them, then the custom must be observed.

But of new Chappels of Ease there may be some question, whether the Ordinary can compel the Inhabitants to repair the same.

But when a number of People have for their ease joyned together, and erected a Chappel, and procured the Bishop to consecrate it (which was the original manner of erecting Churches) it should seem in reason that the Bishop should have the same power to compel the repair, as he has to visit it. 44 E. 3. 18, 19.

But I conceive there is no doubt, but those of the Chappelry, or the major part of them, may agree to make an Assessment for the repair of such Chappel, and agree that the Collector for default of payment should distrain for it; and I conceive such By-law for a publick good, made by the greater number, shall bind the rest. Co. 5. 63, 64. 2.
Co. 8. 127.

The cure of Chappels of Ease in many places is to be performed by those that have the cure of Souls in the Parish; and in some places they are indowed with Lands or Tythes, and in some places by voluntary contributions. * And Land or Tythes may be appendant to a Chappel. *Who has the cure of Chappels.*
* Rast. Entr. Trespass in disse 4. and in Præmunire in Rome 4.
Rolls 1. 110. 2.
Co. 5. 72. b.
22 H. 6. 46. b.
Or Rast. Entr. 2. b.

Whosoever by Law or Custom is bound to provide Chaplains for any such Chappel, may be compelled to do it in the Ecclesiastical Courts,

Or Rast. Entr. 2. b.

or an Action upon the Case lies against him at Common Law to recover Damages for not performing; but this must not be intended of a publick Chappel.

*Offerings at
Chappels.
Othobon cap.
Gratia quæ.*

The Offerings made at any Chappel are to be rendred to the Mother Church; but this must not be intended where by custom, time out of mind, the Chaplain has had them, for there the Canon will not bind; nor does the Canon extend to Chappels of late erection, unless they be with a *Salvo jure matris Ecclesiæ tunc concessæ*.

*How a Chappel
may become a
Church.*

47 E.3.4.b.
5.2.
2 Inst. 364.

If the Patron of a Chappel presentative present to it by the name of a Church, and the Clerk by that presentment be instituted and inducted, it hath lost the name of a Chappel, and gained the name of a Church; *Quare*, what other alteration is made thereby.

*Chappels annexed
to Churches,
how to be re-
paired.*

2 Inst. 489.
*Quare Imp.
will lye of a
Chappel.*

2 Inst. 363.
F.N.B. 33. E.

Publick Chappels annexed to Parish Churches are (as hath been said) to be repaired by the Parishioners as the Church is; but not if any other person be bound by custom to repair them.

And note, That a *Quare Impedit* will lye of a Chappel.

In what Cases the Inhabitants of a Chappel-ry shall be freed from the repair of the Mother Church: See before in this Chapter.

*Private Chap-
pels.*

Private Chappels are such as Noble-men, and other religious and worthy Persons have at their own private charge built in or near their own Houses, for them and their Families to perform Religious duties in; these private Chappels, and their Ornaments, are maintained at those Noble and Worthy Persons charge to whom they belong; and Chaplains provided for

for them by themselves, with honourable Pen-
sions ; and these anciently were all consecrated
by the Bishop of the Diocese, and ought still
to be so , but I doubt many have been neglect-
ed of late time.

The last thing I have to speak of , relating *Church-yards,*
to Churches, is the Church-yard, in Latin *Cæ-*
meterium, from the Greek, *Quasi dormitorium,*
quia mortui dicuntur dormire usque ad resurre- ^{2 Inst. 489:}
ctionem. It is the ground wherein the Church
is erected ; the Freehold thereof is in the Par-
son ; so that the Trees, Grass, &c. growing in
it are his ; but he may not cut down the Trees, ^{Doct. & Stud.}
but in especial Cases, as hath been shewed else- ^{118.}
where. The Fences are to be repaired at the ^{Chap. Quamvis}
charge of the Parishioners, or in such manner ^{lex naturæ.}
as by custom has been used : And the Visitors ^{2 Inst. 489.}
in their Visitations are to inspect the Repairs ,
and to compel the Reparations, if need require.
It is consecrated Ground, and participates of all
the Priviledges belonging to the Church , be-
forementioned, and the Parishioners may here
freely bury their Dead without contradiction ,
or paying any thing for breaking the Soil ; it is
not to be put to any prophane use , to have
Swine kept in it , or muck heaps laid in it, but
kept decently, as a place dedicated to Gods
Service.

CHAP. XIII.

The thirteenth Chapter treats of Parsonages, Vicarages, Sine Cura's and Donatives, and of the Indowments of Vicarages, and how a Parsonage and Vicarage may be re-united, and many other things relating to Parsonages, Vicarages, and Sine Cura's.

A Parsonage or Rectory, quid.

Spelmans
Gloss. verbo
Rector 12.

15 H.7.8.a.
21 H.7.21.b.
Edgar versus
Sorrel, M.5 Car.
B.R.

Ibid.

Cap. Quoniam
autem verbo 5.
q. marcarum.

A Parsonage or Rectory is a certain portion of Land, Tythes, and Offerings, established by the Laws of this Kingdom, for the maintenance of the Minister that hath the cure of Souls within the Parish where he is Rector, or Parson, and properly comprehends, *integra Ecclesia parochialis, cum omnibus suis juribus, prædiis, decimis, aliisque proventuum speciebus: alias vulgo dictum beneficium.* And sometimes it is taken *pro Mansione, seu domicilio Rectoris.*

And though properly a Rectory or Parsonage doth consist of Glebe-land and Tythes with the Offerings; yet it may be a Rectory, though it have no Glebe but the Church and Churchyard; and in some places, as in *London*, and other great Towns and Cities, there may neither be Glebe nor Tythes, but Annual Payments and Offerings in lieu thereof, and by the grant of a Rectory all the Glebe, Tythes and Offerings will pass.

A Vicarage is a Cantel or Portion of the Rectory set out by the Patron, Parson, and Ordinary, for the maintenance of a perpetual Vicar;

car, who as Vicegerent of the Parson, hath the cure of the Souls within the Parish where he is Vicar; but a Vicarage may consist of Land or Tythes alone, or of Glebe, Tythe, and Offerings, or in an Annual Pension without Glebe or Tythes; and such Pensions have been limited by several Canons, first to five Marks, after it was extended to six Marks, and lastly to eight. But generally Vicarages are indowed with Glebe and Tythes.

Of Indowments, some are beyond all time of memory, that is, so long ago, that it is not known in what time or age the same was made, and in such case it shall be presumed, that the Vicar was indowed with such share of the Rectory, Tythes, and Offerings, as the Vicar and his Predecessors have enjoyed by all the time of the memory of any man.

But if the Indowment itself be extant, then the Vicar must be content with such part of the Rectory as he is thereby indowed with.

But if these Indowments be ancient they shall be expounded according to the usage since.

How to be expounded.

And therefore if a Vicar were anciently in the time of *H. 3.* or before indowed *de decimis garbarum*, arising in such a Village, Hamlet or Place, and have by colour of this Indowment, as long as any body can remember, had the Tythe-Hay, as well as Tythe-Corn of the same Villages, Hamlets and Places, it shall be presumed that in those days Hay past by that name.

So if a Vicar were anciently indowed *De minutis decimis*, and have by colour of this Indowment, by all the time of memory, had the Tythe of some small parcel of Wood; although

Tythe

*Rolls 2. 335. 8.
Reynells-versus
Green, M. 10
Jac.B.R.*

Tythe of Wood in its own nature be accounted a great Tythe, yet the Vicar shall enjoy the Tythe of this Wood by reason of the usage.

Hetley 70.135. If a Vicarage were anciently indowed, *de Alteragio*, which properly signifies the Offerings at the Altar; yet if the Vicar, by colour of this Indowment, by all the time of memory have enjoyed the small Tythes, he shall have them still.

Rolls 2.234.
7.335.4.
Owen 74.

If a Vicar be indowed of all the Tythes arising in the Parish (except Corn,) and certain Fields or Grounds in the Parish, have time out of mind been sown with Corn, till of late they have been planted with Hops, or sown with Saffron, Woad, Rape, &c. the Vicar shall have the Tythe, and not the Parson.

Rolls 2.335.
2 & 3 Cro. E-
liz. 578.
More 457.
Hetley 135.
Winch.70.

And if the Vicar be indowed of all the white Tythes, or small Tythes arising, renewing, &c. within the Parish, he shall not by this Indowment have the small Tythes arising upon the Glebe Lands of the Rectory, though they should afterwards be severed from the Rectory.

Vicar shall not
pay Tythes of
the Glebe.
Cromptons
Case.

And it hath been resolved, that upon a general Indowment of a Vicarage, the Vicar shall not pay the Tythes of his Glebe Land to the Parson.

P. 7 Car.1.B.R.
Matter upon in-
dowments.
Rolls 2.335.5.

If the Vicar be indowed of all the small Tythes, and after Lands that have been sown with Corn, or mowed for Hay, time out of mind, whereof the Parson hath had the Tythe, and these Lands are since converted to Hop-yards, or sown with Saffron, Woad, Rape, &c. the Vicar shall have the Tythes, and not the Parson; for the Indowment goes to not to the Lands, but the Tythes.

If a Vicar be indowed of all the Tythes arising upon a Manor, he shall by such Indowment have not only the Tythes of the Demefn, and Tenements, but also of the Freeholders Lands within the Manor. Rolls 2.335.6.

The Parsonage of *Luffenham* in *Leicestershire* the 22 of *E. 4.* was appropriated to the Abby of *Sully*, upon condition that a Vicarage should be indowed: A Vicar from time to time ever since was presented and paid First-fruits, but no indowment now extant, it shall now be intended that it was indowed.

The Indowments of Vicarages have been always favoured at Law, the Vicars for the most part having the cure of Souls.

Indowments of Vicarages were for the most part made upon the appropriating of Churches to Religious Houses, &c. and upon the appropriation they did usually assign some small Portion of the Rectory to maintain a perpetual Vicar to serve the Cure, and took the rest of the Rectory to the use of Abbies, &c. But in process of time the Abbots, &c. grew better Husbands, and took the whole Rectories to themselves, without indowing of any Vicar, and served the Cures by their own Monks and Fryers, by which means Hospitality was neglected, the Churches and Rectory Houses dilapidated, the Minister often wanting, whereupon the Statute of 15 R. 2. and 4 H. 4. were made, for the making void such Appropriations as were made without competent indowment of Vicarages, and likewise against the appropriating of Vicarages; but Vicarages indowed before those Statutes, might notwithstanding those Statutes have been appropriated. *Upon what occasion Vicarages were indowed.*

M

But

*Sine Cura's
how introduced*

But though for the most part Vicarages were indowed upon Appropriations; yet sometimes the Parsons, Patrons, and Ordinaries did indow Vicarages without any appropriation of the Parsonage: And if the Vicar were charged upon such indowment with the Cure, as for the most part they were, then the Parsonage became a *Sine Cura*, of which more hereafter.

*How an Improp-
riation may be
restored.*

17 E. 3. 51. b.

11 H. 6. 18. b.

39 E. 3. 33. a.

19 E. 2. *Quare*

Impedit 178.

Rolls 2. 336.

E. 5.

14 E. 3. cap. 16.

Freehold of the

Vicarage in

whom.

6 E. 3. 50. a.

3 E. 3. 17. b.

9 E. 3. 8. b.

The Parson or Appropriator is Patron of the Vicarage of common right, yet nevertheless a Lay-man might have been Patron of a Vicarage as well as the Parson, and so might the King; and the Advowson of a Vicarage may be appendant to a Manor by Prescription, and it shall be intended it was granted by the Parson before the time of memory.

It should seem that at the Common Law before the Statute of 14 E. 3. the Freehold of the Vicarage remained in the Parson, and that the *Præcipe* was to be brought against the Parson; and before that Statute the Vicar could not have had a *Juris utrum*, and he shall still have aid of the Patron, Parson, and Ordinary.

And as the Vicarage was part, and taken out of the Parsonage; so it may be again re-united.

*How a Vicarage
may be re-uni-
ted.*

31 H. 6. 14. a.

40 E. 3. 28. b.

Rolls 2. 337. h. 1.

For if the Profits of the Parsonage or Vicarage fall into such decay, that either of them by it self is not sufficient to maintain a Parson and Vicar, they ought again to be re-united.

And the Parson and Ordinary, in the time of the Vacation of the Vicarage, may re-unite the Vicarage to the Parsonage.

*Where a Vica-
rage may be en-
larged, and how.*
Rolls 2. 337. h. 2.

And if a Vicarage so fall into decay, that the same is not sufficient, competently to maintain a Vicar, the Bishop may judicially compel the Parson

Parson to enlarge the Vicarage or Appropriator; but by *Catusby* 2 E 4 24. b.: such Augmentation must be made by the Bishop, Patron, and *Catusby*. Ordinary.

It hath been resolved, That where there is a Parsonage and Vicarage indowed, that the Bishop in the Vacation may dissolve the Vicarage: But if the Parsonage be impropriated, the Bishop cannot dissolve the Vicarage; for upon a dissolution the Cure must revert, which it cannot into Lay-hands; for where there is a Parsonage and Vicarage, they both have the Cure; the Parson *habitualiter*, the Vicar *actualiter*, per *Noy*.

If an Impropiator or Appropriator, Patron or Vicarage, by agreement between him and the Ordinary, presents to the Parsonage, by this they are re-united; and it should seem that a bare Presentation, without any Agreement at all, disappropriates the Parsonage, and re-unites the Vicarage.

If any Charge fall upon the Vicarage, it ought to be repaired by the Parson.

And so much of Parsonages and Vicarages.

A Donative is a Spiritual Preferment in the Church, be it Church, Chappel or Vicarage, which is in the free Gift or Collation of the Patron, without making any Presentation to the Bishop: Neither needeth such Clergy-man have any Admission, Institution, or Induction, by any Mandate from the Bishop, or others; but may by the Patron, or by any other authorized by the Patron, be put into possession: And such Incumbent is free from the Visitation of the Bishop; or any other than his Patron or

his Commissioners, and by consequence freed from Procurations.

* 8 Aff. p. 29.
*A Parish
Church maybe
a Donative.*

* And if the Bishop should take upon him to visit a Donative, and deprive the Incumbent, he runs himself into the danger of a *Pramunire*.

Rolls 2. R. 1.
1 Inst. 344. a.
6 H. 7. 14. a.
contra Keble.

* Yelverton
61. F. N. B. 35. e.
f.
1 Inst. 344. a.

Cro. Jac. 63.
*How a Dona-
tive may be
made Presenta-
tive.*

1 Inst. 344. a.
F. N. B. 35. e.
1 Inst. 344. a.

*The King may
found a Dona-
tive, or Licence
a Subject to do
it.*

1 Inst. 344. a.

Ibid.

*A Quare Imp-
lies of a Dona-
tive.*

1 Inst. 344. a.
Yelverton 61.
F. N. B. 35. e. f.

And note, That a Parish Church may be a Donative, and have Cure of Souls: And such Donatives cannot lapse, unless by special Agreement at the Foundation; but the Ordinary may compel the Patron to collate: * But the Patron cannot collate a Lay-man, as some have thought, but a Spiritual Person in Holy Orders; but if the Patron once present to a Donative, and the Clerk upon such Presentation be admitted, instituted, and inducted, it is thereby for ever after become Presentative, and shall be no longer esteemed, or uted, as a Donative: But if a Stranger that has no right, Presents to a Donative, though his Clerk be admitted, instituted, and inducted; yet that shall not alter the Nature of the Living.

If the King found a Church, and exempt it from the Visitation of the Ordinary, it is a Donative, and the King shall visit by his Chancellor.

So it is, if the King found a Church or Chappel, without any special words.

And the King may give Licence to a Subject to erect or found a Church or Chappel Donative, and exempt it from the Ordinaries Visitation; and the Patron may in such case visit by

his own Commissioners.

And a *Quare Impedit* may be brought of a Donative, *quod permittat ipsum presentare ad Ecclesiam*; but the Declaration in

in such case must be special.

And Donatives are within the Statute against Symony, and where they have Cure of Souls, they are likewise within the Statute against Pluralities.

*a-Donatives
within the Sta-
tute of Symony
and Pluralities.
Sine Cura's
quid.*

There is another sort of Church Livings that are commonly called *Sine Cura's*; these are such Parsonages as have Vicars indowed with Cure of Souls, as has been said: But these are not within the Statute of Pluralities; nor are these Livings said to be incompatible; for those Livings are only said to be incompatible that have Cure of Souls; and therefore I conceive their needs no Dispensation, or Faculty, for the taking one of these *Sine Cura's*, though the party had another Living before with Cure of Souls: But herein the party is best to be advised by some Learned Canonist; but by the Statute there needs no Dispensation.

*Livings Incom-
patible.
Quare.*

And so much for Parsonages, Vicarages, Donatives, and *Sine Cura's*: And for other Church Preferments, I shall refer the Reader to Mr. *Hughes* Learned Treatise of the Parsons Law, they being above my undertaking.

CHAP. XIV.

The fourteenth Chapter shews what Resignations and Permutations are, and in what manner they may be made, and other matters relating to them; and of Union and Consolidations.

Resignation,
quid.

A Resignation is where a Parson, Vicar, or other beneficed Clergy-man, voluntarily gives up, and surrenders his Charge and Preferment to those from whom he received the same, which may be absolutely, or upon condition.

To whom.
Dyer 294. b.

A Resignation must regularly be made to the next immediate Ordinary, and not to the Superior.

To or by a Pro-
tor.
Noy 147.

A Resignation may be made by, or to a Proctor; but a Church is not void by any such Resignation in absence, till the same be presented, and accepted by the Ordinary: Or a Resignation may be made in the presence of a publick Notary in the absence of the Bishop; and after it is presented and accepted, it is as good as though the Bishop had been present.

Gaytons Case.
P. 34 El. C. B.

Resignation
may be to the
King.

Dyer 294. p. 56.
Kelway 49.
Plo. 498. a.

Words of Re-
signation.

Dyer 294. p. 56.

And though regularly Resignations ought to be made to the Bishop, from whom the Clerk, upon his admission, receives his Charge and Cure, yet a Resignation to the King, as Supreme Ordinary, hath been held good.

The usual words of a Resignation are, *renuntiare, cedere, remittere, & resignare.*

Donat-

Donatives must be resigned to the Patron, *To whom a Donative is to be resigned.* and not to the Ordinary; for the Clerk in that Case received his Living immediately from the Patron. *Cro. Jac. 63. Yelverton 60.*

And if there be two Patrons of a Donative, *1 Inst. 344.a.* and the Incumbent resign to one of them, it is good for the whole.

In the Case of one *Gayton, P. 34. Eliz.* in *Cro. Jac. 63.* the *Common Pleas*, in a *Quare Impedit* for the Church of *Little Cressingham* in *Norfolk*, a Parson resigned his Benefice in the presence of a publick Notary, *sponte, pure, & simpliciter*, *Resignation in presence of a publick notary. Semble resoluti-* to the use of two upon condition, *quod si ali-* *on.* *qui eorum non admissi fuer. & realem possessionem Ecclesiæ prædictæ adipisci non valeant infra sex menses, quod tunc, &c.* *P. 3. Eliz. 10. 343. C. B.* And in this Case it was very much disputed, whether a Resignation could be upon Condition; but at last with advisement with the Civilians it was resolved, That a Resignation might be upon Condition.

Permutations or Exchanges, are where two *Permutations, quid.* Clergy men agree to exchange their Livings, and after they made such agreement, and put it in writing, they make mutual Resignations upon *Regist. 306.b.* Condition in the form following :

In Dei nomine, Amen. Ego H. de W. Rector Ecclesiæ de N. Lincoln. Diocesi. volens ipsam Ecclesiam meam cum Ecclesia de P. dictæ Dioc. cuius Rector existit Dominus de W. certis iustis, & legitimis de causis sine dolo & fraude Canonice permutare, ipsam Ecclesiam meam ex causa permutationis huiusmodi & non alio modo, in sacras manus venerabilis in Christo Patris Domini T. Dei gratia Lincoln. Episcopi resigno, *A Resignation upon Permutation. Regist. Jud. 306.*

supplicans humiliter & devote, ut H. de hujusmodi causa permutationis ipsam resignationem sic factam & non aliter velitis admittere, & negotium permutationis hujusmodi quatenus ad vos attinet fideliter expedire. Et protestor expresse in his scriptis, quod si dicta permutatio debitum non sortiatur effectum, quod hujusmodi mea resignatio prædicta pro nullo penitus habeatur.

To which is added an Instrument containing a Protestation, in the form following :

The Protestation.

In Dei nomine, Amen. Ego H. de W. nunc Rector Ecclesiæ de P. Lincoln. Diocæs. & prius Rector Ecclesiæ de N. dictæ Diocæs. protestor, dico & allego in his scriptis, quod si contingat quod hujusmodi Ecclesiæ mea de P. absque dolo & culpa meis in hac parte à me aliququaliter evincatur, volo & intendo ad dictam Ecclesiæ de N. absque aliqua difficultate libere & licite redire, & eam re-habere juxta Canonicas sanctiones, & protestor insuper quod non intendo nec volo ab hujusmodi protestatione seu effectu ejusdem recedere aliququaliter in futuro, sed eidem protestationi & contentis in eadem, volo & intendo in futuris temporibus firmiter adhærere, juris beneficio in omnibus semper salvo, &c.

What the effect of this Protestation is, I must leave to the Civilians to determine, however the intent of the thing agrees well enough with the reason of the Common Law ; for at the Common Law if a man exchange Lands, and the Land he receives in exchange be evicted, he may repair to his own Lands, and re-enter upon them. And

And it has been resolved, That where two Parsons of two several Churches by an Instrument in writing agreed to permute their Churches by way of exchange, and severally resigned them into the hands of the Ordinary to that intent, and the several Patrons presented according to the intent of the Exchange, and the one Parson was admitted, instituted, and inducted; and the other was admitted and instituted, but dyed before induction, that though the induction of the other was absolute, yet this was so directed by the precedent Agreement, which was by way of Exchange, which ought to be executed on both parts in the life of the parties; and the induction could not be made upon Condition; therefore for this reason it was all resolved to be void.

Permutation void, quia one died before induction.
45 E. 3. F. exchange 10.
Co. 2. 74. b.
Perkins Title Exchange,

A Union or Consolidation is where two or more Churches are united and consolidated into one, and may be for a certain time; as for the life of the Incumbent; and then it is but in the nature of a Plurality, or it may be perpetual.

Unions are made by the Ordinary by the consent of the Patrons in the vacancy, with the licence or confirmation of the King: But if the Churches, or either of them, be full, the consent of the Incumbent is likewise necessary.

Cro. El. 500, 501
More 661.
50 E. 3. 28. a. 27.
Rolls 2. 778.
40 E. 3. 28. a.
Causa 2. 16. q.
Et Tempori 1.
See Dyer 259.
p. 19. bone
forme du union.
Stat. 37 H. 8.
cap. 21.

By a Statute made in the 37th year of H. 8. the Bishop is inabled to unite Churches which are within a mile one of the other, without the Kings licence or confirmation, so as one of the Churches be not above six pounds in the Kings Book.

By another Statute in the 17th year of King Charles the Second, the Ordinary is inabled in Cities and Corporations to unite Churches, with

17 Car. 2. cap. 3

with the consent of the chief Magistrates, without the Kings licence or confirmation, so the Churches united exceed not 100 *l. per annum*.

The uniting of Churches ought to be *causa utilitatis sive necessitatis*, as vicinity, paucity of Inhabitants, smallness of the Livings, &c.

Cro. El. 501.
Rolls 2,778.

And if two or more Churches shall be united upon a false suggestion, it should seem the union is void, both by the Common and Canon Law.

Cro. Eliz. 501.
per Gaudy &
Fenner.

At the Common Law it should seem Churches might be united of any value by the Ordinary, with the consent of the Patrons and the Kings licence or confirmation. But I find two Judges affirm that the Ordinary might unite poor Livings without the Kings licence or consent, but not great ones: whence the Judges took this difference, I am to seek; for in the height of Popery I find the Kings licence or confirmation always concurrent. And so much for Unions and consolidations.

50 E. 3. 27. 2.
11 H. 7. 82. b.
92.
F. Grant, 104.

Gloria Deo Omnipotenti.

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T H E

Second Part:

BEING THE

L A W

O F

TYTHES or TYTHING.

S H E W I N G

In what manner all manner of Tythes,
Offerings, Mortuaries, and all other
Church Duties are to be paid, and in
what Courts and manner they may be
recovered, and to what charges they are
Subject.

With many other things fit for all People, but
especially all Clergy-men, to know.

Written by Sir *S Y M O N D E G G E* Kt.

L O N D O N,

Printed *Anno Domini* MDC LXXXIV.

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To his Worthy and Re-
verend Son in Law, Mr.
Anthony Trollop, Rector
of Norbury in Derbyshire.

Dear Son,

I*T is now above thirty years, since the Tything Table published many years ago, came to my hand; and upon perusal thereof, finding that the Common Laws and Canon Laws differed in many things, I thought it would be a Work grateful to the Clergy, and useful to others, to publish something in order to the reconciling of them: To which end I had gathered together some Materials; but the War coming immediately on, and after that the Ecclesiastical Courts being laid aside, and other Courses found out for the recovery of Tythes, I desisted the further Prosecution of that Design, until it was*
re-

The Epistle Dedicatory.

*revived at your Request, seconded by
some other Reverend Divines, where
upon looking up my old Notes, and
adding such Judgments and Resolu-
tions, that I have since come to the
knowledge of, the whole is reduced
to the form I here present it to you;
you have most Right to it, and I
heartily wish it may be of as great
Service and Advantage to you, and
all the Reverend Clergy, as is de-
sired by him that is*

Your affectionate

loving Father

S. D.

THE

T H E
L A W
O F
TYTHES or TYTHING.

CHAP. I.

The first Chapter shews what Tythes are, the several sorts and kinds thereof, and in what manner due.



Having in the former part of this Discourse shewed the Worthy and Reverend Clergy-men in what manner they may lawfully and justifiably attain to such Preferments in the Church as they are capable of, and in what manner they may avoid all the perils and dangers that attend the Beneficed Clergy-men. It rests now that I shew them what Profits they may justly challenge to belong to their Church Preferments, and in what manner to be paid, and how

how to be recovered if need require. And first of Tythes, which the Canonists define to be,

Definition.

A tenth part or portion of Increase commanded to be paid to the Sons of Levi for their Ministry, wherein they served in the Tabernacle.

Or, as some others define them, they are,

Omnium bonorum licite quaesitorum quota pars Deo Divina institutione debita.

But the Common Lawyers define them to be,

Co. 11. 13. b.

An Ecclesiastical Inheritance Collateral to the Estate of the Land, and of their own proper Nature due only to an Ecclesiastical Person by the Ecclesiastical Laws.

And for that reason no unity of Possession can extinct or suspend them; but they, notwithstanding such unity, remain in esse, and may be demised or granted notwithstanding any such unity: But may more properly, in my judgment, be defined to be,

A tenth part, or some other thing in lieu thereof, of all the increase yearly arising forth of the profits of the Lands and Stock, or raised by the industry of the Parishioner, and properly due to the Clergy that have the Cure of the Souls in the Parish where they arise.

Division.

And by some Canonists Tythes have been divided only into two kinds, that is, Predial and Personal: And in this manner of division they comprehend all manner of Tythes that arise either immediately or mediately from the Land, under the name of Predial Tythes: which they again distinguish into Predial, mediate and immediate; under which they comprehend the Tythes of Corn, Hay, Wood, Herbs, and all other things, that either come from the ground by

Doct. & Stud. l. 2
c. 55. p. 168. b.
Lindwood c.
Quoniam propter verbum dividentur decima.

by Manurance, or of its own Nature ; and under the name of Tythes Predial mediate, is comprehended the Tythes of all manner of Cattel and other things that receive their nourishment from the ground.

But Tythes by the Common Lawyers (and ^{2 Inst. 649.} which division I shall observe in my Discourse) ^{Roll 1. 635. a.} are divided into Predial, Mixt and Personal :

And according to this division all Tythes that arise from the ground, as before is said, immediately, are only accounted to be Predial : And those that arise from Cattel and other things, that receive their nourishment immediately from the ground, they call Mixt ; and those that arise from the Labour and Industry of man alone, Personal. ^{Lindwood c. Quoniam propter verbum talibus decimis.}

Tythes again both by the Common Lawyers and Canonists are divided into great Tythes, in Latin *majores seu grossæ decimæ* ; and into small Tythes, in Latin *minores*, or *minute decimæ*. And in this division Corn, Hay and Wood are all accounted gross or great Tythes. But there has been some question whether Tythe Wood should be accounted a great or minute Tythe, and resolved that if a Vicar be only indowed with the small Tythes, ^{Rolls 1. 643.} and have by reason thereof always had Tythe ^{v. 2.} Wood, that in such case it shall be accounted a ^{2 Bulst. 27.} small Tythe, otherwise it is to be accounted amongst the great Tythes. And Woods has ^{Littl. Rep. 244.} been twice adjudged to be a small Tythe, as *Littleton Reports*.

But all manner of Tythes of Gardens, Herbs, ^{Cro. El. 467.} Roots, Fruit, Saffron, Woad, whether sowed ^{Hutton 77.} in Fields or Gardens, Flax, Hemp, Hops, Rape, ^{Cro. Car. 28.} and all other Predial, Personal, and Mixt ^{Rolls 1. 643.} Tythes ^{v. 3.}

N

Tythes

Palmer 219.
220.

Tythes are accounted *inter minutas decimas*; but in *Udal's* and *Tindal's* Case, *Hutton* 77. in some cases Hops, Woad, &c. may be great Tythes in places where they are much sowed.

Lindwood c.

*Quoniam propter
verb. tali-
bus decimis.*

And herein the Custom of *England* is kind to the poor Vicars, making many things to be allowed for minute Tythes that are not so in others.

Spelm. Gloss.

28 Cro. El. 578.

Hetley 135.

Winch. 70.

Quo Jure debet.

I have been the longer in this division of Tythes between great Tythes and small Tythes, because many Vicarages are indowed with the small Tythes only; and in some old Indowments you will find the word *Alteragium*, which by Custom may as well comprehend the small Tythes, as such Profits as arise from the Altar.

Now perhaps it may be expected I should say something to satisfy the Reader by what Law Tythes became due under the Gospel. But in that point I find so great a difference between the Canonists, School-men and Divines, that it would be a great presumption in me to take upon me to determine the point, the rather because I am informed by a reverend, learned and grave Divine, that the learned *Selden*

Heylins Hist. of

Presbytery 391.

Seld. Hist. de-

cim. c. 5. §. 4. c. 7.

And in the end

of the Epistle to

the Reader.

The Question.

retracted his Opinion therein; and what it was you may see in the places noted in the Margent: But so far as I have observed, they all agree in this, That Tythes *quoad sustentationem Cleri vel Ministrorum Dei* are *Jure Divino*; So that the sole question amongst all these learned men is about the quantity, or *quoto pars*. But be they due *jure divino*, *jure Ecclesiastico*, or *jure Humano*, I conceive the difference cannot be great, since, as it must necessarily be confessed, they have been given and consecrated *Deo & Sancta Ecclesiae*; and so being dedicated to God and his Service (in my poor judgment) the taking them away from

from the proper use and end, cannot be less Sa-
 crilegious, than if they were without dispute
Jure Divino, I shall not therefore stuff this
 present Discourse with the Arguments of any
 side; but shall leave the Learned to their own
 conceits, it serving my purpose that they be
 due by any Law, Divine, Human, or Ecclesi-
 astical. My next Examination shall be to whom
 they are due.

Do&Stud.l.2.
 c.55.f.164.b.
 165.a.

CHAP. II.

*The second Chapter shews to whom
 Tythes are due, and by whom to be
 paid.*

HAVING shewed in the former Chapter
 what Tythes are, and the several kinds
 thereof, I shall in the next place shew to whom
 the same are due to be paid.

*To whom Tythes
 are due to be
 paid.*

That there were Infeudations of Tythes be-
 fore the Parochial Rights were settled, is with-
 out dispute both here in *England*, and in other
 Christian Kingdoms and Commonwealths: In
 which particular the curious may satisfy them-
 selves in Mr. *Selden's History of Tythes*, and o-
 ther Authors. And it is more clear, that before
 the time that the Parochial Rights of Tythes
 were settled, that the Owners of Lands might
 grant their Tythes to any Ecclesiastical or Re-
 ligious Persons (a multitude of Presidents,
 whereof the Reader for his satisfaction may find
 in the *Monasticon Anglicanum* of Mr. *Dugdale*;)
 so that by this means the whole Tythes of some
 N 2 Parishes,

Seldens Hist.de-
 cim.178, &c.
 Tho. Aq. Sum.
 20. 2æ. q. 88.
 art.3. conclusi-
 ons.

Parishes, and divers great Portions out of other Parishes, were granted to Abbots, Priors, &c. And some to the Parsons and Rectors of other Parishes; which is the reason that at this day there is several Portions of Tythes held from the Parish Churches by Impropriators and the Rectors of other Parish Churches.

When the Parochial Right of Tythes first began.

10 H. 7. 8. 2.

43 E. 3. 5.

Doct. & Stud. l. 2.

c. 55.

Co. 2. 44. b.

Dyer 84. &c.

When the Parochial Right of Tythes was first settled, there hath been (as should seem) a vulgar Error: For 'tis frequently said in our Common Law Books, that before the General Council of Lateran, which was held 1179. that every one was at liberty to give his Tythes to what Spiritual, Ecclesiastical or Religious Person he pleased; but that by that Council the Parochial Right of them was settled. Neither was this an Error of the Common Lawyers only, for Mr. Lindwood a Learned Doctor of the Civil and Canon Laws, that lived in the time of H. 5. about two hundred and fifty years ago, tells us, that

Lindwood c. locat. & conduct. verb. portion.

Bene potuerunt Laici decimas in feudum retinere, & eas alteri Ecclesiæ dare ante Concilium Lateranense, non tamen post, &c.

Seldens Hist. decim. 231.
2 Inst. 641.

But there is no Canon in that Council to be found, whereby the Parochial Right of Tythes was settled, nor was the Parochial Right of Tythes settled till the year 1200. and then not by any Canon, but by a decretal Epistle of Pope Innocent the Third, a Brief of which Epistle here follows, as I find it in Mr. Selden's History of Tythes, and in Sir Edward Cook's Institutes.

Innocent 3. Ep. Decret. l. 2. p. 452. Edit. Coelen.

Seldens Hist. of Tythes.

Pervenit ad audientiam nostram, quod multi in Diocesi tua Decimas suas integras vel duas partes ipsarum non illis Ecclesiis, in quarum Parochiis

rochiis habitant, vel ubi prædia habent, & à quibus Ecclesiastica percipiunt Sacramenta, persolvunt; sed eas aliis pro sua distribuunt voluntate: Cum igitur inconueniens esse videatur & à ratione dissimile, ut Ecclesiæ, quæ Spiritu- alia seminant, metere non debeant à suis Paro- chianis temporalia, & habere, Fraternitati tuæ (being directed to the Archbishop of Canterbu- ry) auctoritate præsentium indulgemus, ut liceat tibi super hoc, non obstante contradictione vel appellatione cujuslibet seu consuetudine hæcenus observata, quod canonicum fuerit ordinare, & facere quod statueris. per Censuram Ecclesiasti- cam firmiter observari: Nulli ergo, &c. Con- firmationis, &c. Datum Lateran. 2 Nonas Julij.

Innocent 3. tells us in his Epi- stles, that Tythes are due to the Parish Priest de communi jure, Vide Decretal. Greg. l. 3. de de- cimis c. 30. Cum in tua Dioces. & ibid. c. 29. Cum contingat.

I must acknowledge I give the Reader this a little imperfect for want of the Original: and it was Sir *Edward Coke's* case also; for I perceive he borrowed his from *Mr. Selden*.

But some have fancied (and perhaps not without reason; for this seems not to be a general Decree, but a particular Instruction to the Archbishop of *Canterbury*) that the Parochial Right of Tythes was not generally settled of long after, that is, by a Canon made in the Council of *Lyons*, which was in the year of our Lord 1274. under *Gregory* the Tenth, in which Council, it is said, there is a Canon for the settling the Parochial Right of Tythes, but not found among the Canons of that Council. But whether that were the Original, or a Confirmation of some other Decree or Council, I dare not take upon me to judge: But certain it is, that about this Century the Parochial Right of Tythes was settled in general. But though this decretal Epistle of Pope *Innocent* the Third be

Vide Seldens Hist. of Tythes, 147.

not general, yet it was Obligatory as to the Province of *Canterbury*; so that in that Province the Parochial Right of Tythes may take its date from the time of that decretal Epistle, which was, as above is said, in the year 1200.

Page 358.

Mr. Doctor *Godolphin* in his *Repertitorium Canonikum* seems not satisfied, that it is a vulgar Error in our Books, that before the Council of *Lateran*, every one was at liberty to give his Tythes to what Spiritual or Religious Person he pleased, and to prove a settlement of a Parochial Right of Tythes by a Council of *Lateran*, he cites a Canon made by *Innocent* the Third in the second Council of *Lateran*, held in the year of our Lord 1120. sixty years before the Council held under *Alexander* the Third 1179. or as some have it 1180. where he says it was decreed that the Religious Persons, *videlicet*, the *Cistercians*, *Hospitalers*, *Templers*, and those of *St. John of Jerusalem*, which by the Popes *Paschal* and *Adrian* were exempted from payment of Tythes, should pay the same to the Parochial Incumbent, whereby a Parochial Right of Tythes was settled by a *Lateran* Council, as he concludes.

Page 616.

But I wonder the Doctor should mistake himself so much; for first, there was no *Lateran* Council in the year 1120. and he himself in his Catalogue of the Councils mentions none to be held that year, but assigns the second *Lateran* Council to be held in the year 1131. wherein the Dr. is again mistaken, for the second *Lateran* Council that is not reckon'd amongst the General Councils, was held under *Paschal* the Second 1112. And the second General Council held in the *Lateran*, was held under *Innocent* the

the Second, *Anno* 1139. but of neither of these Councils are any Acts to be produced; besides Pope *Innocent* 3. entred not upon the Papacy till 1199. and so could hold no Council 1120.

But I presume the Doctor meant the Council of *Lateran* held under *Innocent* the Third 1215. where there is a Canon something like that the Doctor mentions; for by that Council it is decreed, That the *Cistercians*, and all other Orders priviledged from the payment of Tythes (without enumerating any more of the Orders) should pay Tythes of such Lands as they should purchase after that Council, although they held them in their own proper hands; *Ecclesiis quibus ratione prædiorum antea solvebantur, nisi cum ipsis Ecclesiis aliter duxerint componendum:*

Decret. Greg. l. 3
tit. 30. cap. 34.

But this can settle no Parochial Right, for it is only that the Tythes shall be paid to the Churches, *quibus antea solvebantur*. And that the Parochial Right of Tythes was settled before that Council appears clearly by the very next Canon of that Council: For there being complaints made in that Council that divers Clerks, as well Regular as Secular, upon Grants and Leases of their Lands, took Covenants of their Grantees and Tenants to pay their Tythes to the Grantors in prejudice of the Parish Priests, it was therefore decreed, *quod quicquid fuerit occasione hujusmodi pacti præceptum Ecclesia parochialireddatur*; this word *reddatur* proves sufficiently that the Parochial Right was settled before that time; and Pope *Innocent* the Third, in several of his Epistles, declares that they are due to the Parish Priests *de communi jure*.

Greg. Decret. l. 3
de decim. c. 30.
Cum tua Dio-
ces. & ibid. c. 19.
cum contingat.

And that the Parochial Right of Tythes was not settled by any General Council, but by a Pa-

7 E.3.5.2.

Nota.

pal Constitution appears clearly by what Sir *Robert Parning* says, who lived within a 100 years of this time, and was after Chief Justice of the *Common Pleas*, who could not be ignorant how the Parochial Right of Tythes was settled, and he says that in ancient time before a new Constitution made by the Pope, the Patron of a Church might grant Tythes within his Parish to another Parish.

But whether the Parochial Right of Tythes was settled the one way or the other, it seems that all former Grants wer nullified, or otherwise the Constitution had wrought small effect to the end it was designed, the greatest part of the Tythes being before that time granted to Monasteries, as may be observed in the *Monasticon Anglicanum*.

But notwithstanding this Constitution, many of the Abbots held out against the Parish Priests, who durst not, or were not able to contest them, and after claimed the Tythes by Prescription, that is to say, by forty years possession, which is a Prescription allowed by the Ecclesiastical Courts, and that's the reason that many Portions of Tythes are at this day held by Impropriators that had been gained by the Abbots by such Prescriptions, and not by their ancient Grants, and by this means they got their Prescription *de non decimando*: For the Canon Law does allow one Clergy-man to prescribe against another, but not a Lay-man by any means to the prejudice of the Church. But if a Clergy-man, Secular or Regular, continue to have the possession of a portion of Tythes in another Parish quietly forty years, this shall make him a good title against the proper Incumbent,
and

and the same Law holds *de non decimando* : Greg. Decret. l. 2. tit. 26. c. 6. ad aures nostras.
 For if a Clergy-man Religious, Secular or Regular, hold any Land forty years together Tythe free, he shall hold Tythe free for ever ; but if a Lay-man hold Lands Tythe free a thousand years, it avails him nothing by that Law. Ibid. c. 7. causam quæ, &c.

But after the Parochial Right of Tythes was settled, it is clear, that no Lay-man was capable of Tythes in pernancy, but in particular Cases, till the Statutes, by which the Monasteries and Religious Houses were dissolved, enabled them : Selden. Hist. decim. 398. and in his Review 478. Co. 2. 44. a. But in some special Cases Lay-men were capable of Tythes in pernancy, as in the Case of *Pigot* Lay-men capable of Tythes in Pernancy. Co. 2. 45. a. and *Heron* cited in the Bishop of *Winchester's* Case : where the Case is put, That the Lord of a Manor, and all those whose Estate he had in the Manor time out of mind, had paid to the Parson of D. (in which Parish the Manor lay) for the time being, a certain Sum for the maintenance of Divine Service in contentation of all Tythes arising within the said Manor, and that in consideration thereof he, and all those whose Estates he had in the said Manor by the time aforesaid, had and enjoyed all the Tythes arising in the said Manor : And in this Case it was adjudged, That the Lord of the Manor might have these Tythes in pernancy, and sue for the same in the *Spiritual Court* ; but a man cannot claim Tythes generally as part of, or belonging to a Manor.

But since the several Statutes made for the dissolution of Monasteries, those Tythes which were appropriated to the Religious Houses so dissolved are become Lay-fee, and any Lay-men by the Laws of this Realm are capable of them in pernancy, and may sue for the same in the *Spiritual Courts*. Lay-men capable of Tythes in Pernancy by the Statutes of the dissolution of Abbeyes. But

*All the Tythes
belonging to the
Rector prima
facie.*

*Portions by
Prescription.*

14 H.4.17.a.

44 Ass.p.25.

Rolls 1.657.0.

Seldens Hist. of

Tythes, 161.

How Prescripti-

ons are to be

proved.

Seldens Hist.de-

cim.364.

290.

Selden 399.

*Extra-parochi-
al Tythes.*

7 E. 3.

Seldens Hist.
decim.108.

21 Ass. 75.

2 Inst.647.

Rolls 1.657.

o.p.

Seld.Hist.de-

cim.365.

* 10 H.7.18.a..

Co.5.part

128.

But since the Parochial Right of Tythes was settled *prima facie*, all Tythes not appropriated belong to the Rector of the Parish Church wherein they arise; yet notwithstanding the Parson of one Parish may prescribe to have a portion of Tythes in the Parish of another; and so might Abbots, Priors, and other Religious Persons prescribe to have portions of Tythes in Parishes, whereof they had not the Advowsons, and by consequence the Patentees from the Crown, and the Impropiators may claim the same by prescriptions in the Abbots, Priors, &c. and the usage since the dissolution will serve to prove the prescription and usage in the Abbots, &c. that they held the same so time out of mind. But no Lay-man at this day is capable of Tythes in pernancy, but under the Statutes of Dissolution, unless by a grant by the Bishop, Parson and Patron made before the disabling Statutes.

As for Extra-parochial Tythes, there has been some differing Opinions. Sir *William Herle* was of Opinion, that they belonged to the Bishop of the Diocess, as general Parson of his whole Diocess, grounding his Opinion, as it should seem, upon the Canon Law: But there was never any such Canon received or approved in this Kingdom.

But it hath been resolved both in Parliament, and by several Judgments at Common Law, that all Extra-parochial Tythes belong to the King, who is * a mixt Person, and capable of Tythes at the Common Law in pernancy.

Now having shewed in general who are capable of Tythes in pernancy at this day, and to whom of common right they belong, I shall pro-

proceed to shew to whom they are due in some particular Cases.

If a Parson Lease his Glebe-Lands, and do not also grant the Tythes thereof, the Tenant shall pay the Parson Tythes: Nay though the Parson Lease his Lands *cum omnibus proficuis & commoditatibus eidem spectantibus*, rendring Rent, *pro omnibus exactionibus & demandis quibuscunque*; yet notwithstanding the Tenant shall pay the Parson the Tythes arising upon these Lands.

The like Law it is, if an Impropiator, Vicar, &c. make such Lease, &c.

And as the Parson shall have Tythe of his own Tenant, so he shall have of his Fcoffee: And if a Parson have Lands in the same Parish whereof he is Parson, and demises his Tythes, he shall pay Tythes to his Farmer.

If a Parson sow his ground, and then sell the emblements (I mean the Corn growing upon the ground) the buyer of the Corn shall pay the Tythe of it to the Parson that sowed and sold the Corn.

So if a Parson sow his Glebe-Land, and then Lease the Land, the Tenant shall pay his Parson Landlord Tythe of this Corn.

There has been some Opinions, that if the Parishioner sow his Lands, and before severance the Parson dye, that in this Case the Parsons Executors, and not his Successor, should have the Tythes.

And there has been some Opinions, that if the Parson sow his Glebe, and dye before severance, that his Executors should not pay Tythes of this Corn.

In particular Cases to whom Tythes are due.
Cro.El.161.

Against the Parsons own Lease.

Owen 39.

Portman versus

Hind. M. 31 &

32 El. B.R.

Co.11.13.b.

Dyer 43. p.22.

est Quere.

Hetley 31.

Against his Feoffment.

Co.1.111.a.

Co.11.13.b.

Cro.El.261.

Dyer 43. p.21.

Moyle versus

Ewre.

Hill.11 Jac.B.R.

Rolls 655. k.1.

Co.10.88.b.

21 H.6.30.a.

Uphaven versus

Humfries, 40

El. per Poph.

& Gawdy vers.

Fenner.

But

To whom the
Tythes in the
Vacation be-
long.

Stat. 28 H.8. c.
11.

Rolls 655. k.3.

Cap. Nullus Re-
ctor verb. de-
cesserint.

Whether the Vi-
car and Parson
shall pay to each
other.

Cromptons Caf.
P.7 Car. 1. B.R.
Hetley 135.
Cro. El. 578.
Winch. 70.

Tythes may be-
long to a Chap-
pel.

More 457. 910.
Hetley 135.
Winch. 701.

13 Aff. p. 2.
Dyer 87.
Rast. Ent. Tresp.
in dismes 4.
& Præmunire
in Rome 4.

* Decret. Greg.
de decim. Cum
sunt Glofs. ver-
bo diversa.

But both these Cases, if they had been Law, are put out of doubt by the Statute of 28 H. 8. which hath given all the Tythes and other Profits belonging to the Rectory to the Successor, from the death of the last Incumbent, which hath taken away all pretence the Executors could have in such Cases. But notwithstanding this Statute, I take the Law to be clear, that the Executor of the Parson shall have the Corn sown by his Testator in his life time, as the Executors of other Tenants for life have by the Law.

And so it is settled by the Statute of 28 H. 8. before mentioned: But if the Parson, Vicar, &c. sow the Land and be deprived, resign or accept another Living, the Successor shall have the Tythe.

It hath been held, that the Vicar upon a general Indowment shall not pay Tythes of his Glebe to the Parson, or the Fruits that arise from the same, *Quia decimas Ecclesia Ecclesie reddere non debet*, without special words.

So if a Vicar be indowed of all the small Tythes arising within the Parish, yet he shall not have the small Tythes arising upon the Glebe-Lands of the Parson.

Tythes by prescription may be appendant to an ancient Chappel.

* And note, That by the Canon Law personal Tythes are to be paid, where the party communicates, but predial to the Parson within whose Parish the Land lies. *Lindwood cap. Sancta Ecclesia.*

CHAP. III.

The third Chapter shews of what things Tythes are due, and in what manner the Tythes of Hay and Corn are to be paid.

TYthes regularly are to be paid of all things *Of what things* annually arising from the ground, either *Tythes are to be* of themselves, or by the Culture and Industry *paid.* of the Parishioner, without any deduction of *Co. 11. 160. F.N.B. 53.E.* charge in their proper kinds, as soon as the same may be separated and divided from the nine *Lindwood c.* parts in Sheaves, Garbs or Heaps. But the manner and form of the payment of Tythes is for *Quoniam propter verb. non deductis expensis.* the most part governed by the custom of the place: And therefore if by custom the tenth *How Tythes of Corn are to be paid.* part of Corn or Hay hath been measured forth growing upon the Lands, as 'tis in some parts of *Lincolnshire*, this manner of Tything is to be observed; for in what manner soever the Tythe hath been paid time out of mind, in such manner it still ought to be paid; and therefore *Stat. 27 H. 8. c. 20. 32 H. 8. c. 7. Latch. 125.* where Tythe Corn hath used to be paid time out of mind in Sheaves or Garbs bound up, it is no good payment to leave it in bonds unbound, as I have known some contentious Parishioners do.

And it should seem that the Parishioner of *More 913.* common right ought to bind his Corn in Sheaves. See *Rolls 1. 644. y. 5.*

And where the custom was that the Parson should have the tenth Land from the Hedge, and the Parishioner neglects to sow the tenth Land,

Land, the Parson shall not have his Tythe in kind, but a special Action on this Case for not sowing it.

How the Tythe of Hay is to be paid.

Hob. 250.

Rolls 1. 644. y.

1, 2, 5, 6.

So for the Tythe of Hay, if the Parishioner have used to make it into Haycocks before they have set forth their Tythes, they must do so still; but where there is no such custom, they may set it forth in Grass-cocks.

The same order ought to be observed in all other things arising from the Ground, as Rape, Saffron, &c. and other fruit.

Rakings.

2 Inst. 652.

Cro. El. 660.

More 278.

Cro. Jac. 42.

Yelverton 86.

Hetley 133.

Rolls 1. 645.

Z. 11, 12 & 13.

Aftermaths.

But no Tythes are to be paid for the Rakings of Corn, unless the Parishioner fraudulently scatter his Corn to couzen the Parson of his Tythes.

Neither are Tythes to be paid of the aftermaths of Meadows, nor of balks in Corn-fields, or of the stubble of Corn: But if the Meadows be so rich, that there is two Crops of Hay got in one year, or two Crops of Wood, &c. there the Parson shall have Tythe as well of the latter as of the former Crop.

Rolls 1. 647. 2.

11, 12.

Green Pease.

If a man gather green Pease to spend in his House, and there spend them in his Family, no Tythes shall be paid for the same; but if he gather them to sell, or to feed Hogs, there Tythes shall be paid for them.

Headlands.

Rolls 1. 646.

Z. 19.

Neither shall Tythe-hay be paid for the Grass growing upon Head-lands, which are only large enough for the turning the Plow.

2 Inst. 652.

Orchards.

But Tythe shall be paid of the Hay and Corn growing in Orchards, though the Tythe of the Fruit growing in them were paid the same year, be it Apples, Pears, Cherries, &c.

More 683.

Cro. Jac. 47.

Fodder.

There hath been some question about Fodder gotten in the Fenn Lands in *Cambridgeshire*, and

and elsewhere, and spent upon Beasts of the Plow and Pail, whether it should pay Tythes or no; but it hath been resolved, That Tythes shall as well be paid of this Fodder, as of other Hay spent upon the Beasts of the Plow and Pail.

But it has been resolved, That for Grass cut in Meadows to feed the Beasts of the Plow, and not made into Hay, Tythes should not be paid thereof.

It hath been resolved, That Tares, Vetches, &c. cut green for the feeding Beasts of the Plow, by custom may be freed from the payment of Tythes, but not without custom.

Grass cut in Meadows for Beasts of the Plow.

Wells versus

Crawly, T. 1

Car. 1. B. R.

Tares, Vetches cut green.

Cro. Car. 393.

Jones 375.

2 Leonard 27.

CHAP. IV.

The fourth Chapter sets forth where, and in what Cases, and in what manner, the Tythes of Wood are to be paid.

IN the time of Stratford Archbishop of Canterbury, in or about the 17th year of the Reign of E. 3. 1343. there was a Provincial Canon or Declaration made to this effect.

How and where Tythe Wood is to be paid.

Declaramus provisione concilij sylvam cedam illam fore, quæ cujuscunque existens generis arborum in hoc habetur ut cedatur, & quæ etiam succisa rursus ex stirpibus aut radicibus renascatur; ac ex ea decimam utpote realem & prædialem parochialibus seu matricibus Ecclesiis persolvendam, nec non Sylvarum possessores hujusmodi ad præstationem decimarum lignorum

Canon.

Lindwood c.

Quamquam ex solventibus, &c.

lignorum ipsorum Excisorum in eis sicut fœni & bladorum omni censura Ecclesiastica fore Canonicè compellandos.

*Exact Abridg-
ment, p. 40. nu.
51. & ibid. 80.
num. 37.*

But in or about the same year there was a Petition in Parliament, That no man should be impleaded in a Court Christian for the Tythes of Woods or Under-woods, but in places accustomed, which was answered; as heretofore, the same shall be.

The like Petition was in the 25th year of E. 3. and other Parliaments, till at the length, in the 45th year of the same King, an Act of Parliament was made to this effect, reciting,

*St. 45 El. 3. c. 3.
Tythes not to be
paid of great
Wood.*

That whereas they sell their great Wood of the age of twenty years or of greater age to Merchants to their own profits, and in aid of the King in his Wars, Parsons and Vicars of Holy Church do implead and draw the said Merchants in Suit in the Spiritual Court for the Tythes of the said Wood by the name of Sylva cædua, whereby they cannot sell their Woods to the very value, to the great damage of them and the Realm; It is therefore by that Law ordained and established, that a Prohibition in this case shall be granted, and upon the same an Attachment, as hath been used before this time.

By which it appeareth, that this Act of Parliament was but a Declaration of the Common Law, Prohibitions and Attachments thereupon in such case having been formerly used, and so was *Paston's* Opinion, 9 H. 6.

*9 H. 6. 56. a. 1.
T. 27 E. 1. ro.
28. a.
Prohibition in
Point.
50 E. 3. 10. a. 1.*

This Act of Parliament was after questioned by the Clergy, pretending it did not pass as an Act of Parliament, but only as an Ordinance, and so not binding. And thereupon the Com-
mons

mons in the next Parliament petitioned, that it might be enacted, That for Wood above twenty years growth no Tythes should be due, and that in all such cases a Prohibition might be granted. To which was answered, That such Prohibition should be granted as then before had been used.

Exatt. Abridg.
118. nu. 21.

But Sir *Edward Coke* in his Commentary upon *Magna Charta*, does sufficiently prove it was an Act of Parliament.

1. Because it is entred upon the Parliament Roll amongst other Acts of Parliament. 2. It is under the Title in that Roll of Statutes of *E:*

2 Inst. 643:
644.

3. *Anno regni sui 45.* 3. It was proclaimed with the rest of the Acts of that Parliament.

4. It is penned in the form of an Act of Parliament, viz. (*It is ordained and established.*)

5. It hath the consent of the Lords and Commons. 6. There hath been infinite Prohibitions upon it. To which let me add, That in

the Parliament of 8 R. 2. it was owned for an Act of Parliament, in which Parliament 'tis

Exatt. Abridg-
ment of Records:
nu. 21.

like many of the persons were present that were at the making of the said Act.

And in 9 H. 6. exception was taken to the Prohibition, because it was not grounded upon this Statute:

9 H. 6. 562.

And in the 11 H. 4. it was affirmed by *Thirning* to be an Act of Parliament, and in force.

11 H. 4. 92.

But whosoever desires more satisfaction in this point, I refer them to Mr. *Selden's History of Tythes*, and the other places mentioned in the Margent:

Seldens Hist. de:
cim: 236.
2 Inst. 643:
644.
Rolls 1. 637.

Notwithstanding this Act, many questions were started what was *Sylva cadua*, and many

Petitions in Parliament to have it declared, to which I find no positive answers, but sometimes referred to usage, and sometimes the King took time to advise.

Sylva cadua
quid.
50 E.3.10.b.

But *Belknap* a learned Judge, 50 E. 3. declares, that *Sylva cadua* is to be intended every manner of Wood that may be cut and will grow again; which all manner of Wood will do, as he there says, if it be preserved from Cattel; and therefore the Defendant in the Prohibition in that Case was put to traverse, that he sued not in the Spiritual Court for the Tythes of gross Woods.

So that the question at this day chiefly is, What shall be said gross Woods? To which question

2 Inst. 643.
What shall be
said great
Wood.
Contra Rolls 1.
640.q.5.
Flow.470.a.b.
Contra Rolls 1.
640.q.7.
Hob.288.
Rolls 1.640.q.
6,7,8.
Hob.219.
Noy 30.
Cro.Jac.199.

More 907. That Birch is in some places taken for great Wood and not Tythable.

Cro.El.499.
609.

Lit Rep. 241.
Rolls 2.298.o.1.
2 Inst.652.

Cro.Car.113.

More 683. Rolls 1.544.z. 1, 2, 3. Hetley 88.1110. Of what wood Tythe shall be paid.

The Judges of the Common Law have resolved, That all sort of Wood that is usually employed for the Building of Houses, Mills, &c. are gross Woods, and within this Statute: Of which sort there are Oak, Ash, Elm, Beech, Horse-beech and Horn-bean against the Opinion in *Molyn's Case*: Asp is likewise esteemed a gross Wood, being sometimes used for Timber; but for Willows, Haskels, Hollies, Maples, Birch, Alders, Thorns, &c. of what age or bigness soever they be, they are regularly to pay Tythes.

But if they be cut for fencing of Grounds, or for Fewel to be spent in the Houses of the owner within the same Parish, no Tythes shall be paid of them.

More 683. Rolls 1.544.z. 1, 2, 3. Hetley 88.1110. Of what

But

But if by custom Tythes have been paid of such Wood, the custom is to be observed. Rolls 1. 645. z. 8, 9.

So if a man cut Wood for the burning of Bricks, which are imployed for the repair of Houses and Buildings of the Owner within the same Parish, no Tythes shall be paid for it; but if he make Bricks to sell, or for making of Houses of Pleasure, or other than for necessary Habitation, he shall pay Tythe for the Wood spent therein, if Tythable. Burning Bricks. Rolls 1. 645. z. 10.

If a man convert his Land into a Nursery for Fruit-trees or other Trees, and sell them for profit to such as transplant them into other Parishes, he shall pay Tythes of them. Nurseries. Rolls 1. 637. e. 6. Cro. Car. 525. Jones 416.

If a man cut his Copice-wood, and pay Tythe of them, and soon after grub up the Roots to cleanse the ground, he shall not pay Tythes of them. Crubbed Wood. Rolls 1. 637. c. 7.

Upon the whole matter it is left a little uncertain which shall be accounted gross Wood; because in some Countries almost the meanest sort of Wood is used for Building, and the Judgments in our Books vary, some allowing one thing for Timber, which another contradicts; but the proper and undeniable Wood for Timber are Elm, Ash, and Oak, which are used for Timber in all Countries and places. It rests now to shew in what Cases such Woods as are accounted gross Wood shall pay Tythes.

If Oak, Ash, Elm, &c. which are esteemed Timber in the Countries where they grow, be cut under one and twenty years growth, they are accounted *Sylva cædua*, and ought to pay Tythe.

But the Loppings of great Oaks, Ashes, &c. though the Lops be under twenty years growth,

2 Inst. 643.
Cro. Jac. 100.
More 762. 908.
Plow. 470. b.
Rolls 1. 640.
q. 1. 3. 4.
Co. 11. 48. b.
49. 2.
Bark.
2 Inst. 643..
Co. 11. 49. a.

shall not pay Tythes; for they are priviledged by the Bodies, neither shall Tythes be paid of the Shoots and Under-wood, which grows from the Roots and Stocks of such Timber-trees, and Trees above the growth of twenty years, which have been felled.

Nor shall Tythes be paid of the Bark of such Trees as are Timber-trees, and priviledged from the payment of Tythes.

But Tythes shall be paid of the Mast, Acorns, &c. of Timber-trees, because the same is of annual increase.

2 Inst. 643..
Dotards.
2 Inst. 643..
Cro. El. 477.
Rolls 1. 640. q.
2.

Neither shall Tythes be paid of Timber-trees, which become dotard, and are become *arida*, *sicca*, & *non portans folia in aestate nec existens maheremium*.

More 908.
Co. 11. 49. a.
Rolls 1. 640. q. 1
Wood mixt with
great and un-
derwoods.

If one lop Oaks, Ashes, &c. under twenty years of age, and after let them grow above twenty years of age, no Tithes shall be paid of them or their Lops.

Parsons Law,
99. T. 19 Jac. B.R.
Buckhurst verf.
Newman. Parson
of Staplehurst.
T. 36 El. B.R.
per Henden.
Who shall pay
the Tythe of
Wood.

It hath been held, That if a Wood-ground be mixt with Woods tythable, and Woods not tythable, and the greater part be such as are not tythable, it shall priviledge the rest, and pay no Tythe; but if the greater part be tythable, it shall pay the Tythe of such part as is tythable; for where the greater part is great Wood, the whole shall be called grand Wood *à majore*.

Lindwood c.
Quamquam ex-
solvantibus &
verb. Sylvarum
pos. & cap. Quis
quidam male-
ditionis verb.
asportam.

It hath been a question amongst the Canonicists, who shall pay the Tythes of Wood tythable, the buyer or the seller. Mr. Lindwood in his Gloss upon the Canon before recited, seems to be of opinion, that the buyer shall pay the Tythes, *Quia verum enim est quod decima sequitur fructus, & cum onere decimæ transferuntur*

tur fructus in alterum; and this Opinion of his seems reasonable, where the Owner of the Wood sells the whole Wood together, or parcels it out, and the buyers cut it; but if the Owner of the Wood cut it himself, and then sells it by parcels, there it seems reasonable, that the Owner of the Wood should pay the Tythe, but by the Common Law the Parson may sue the one or the other at his Election. Rolls 1.656.1.1

And it is to be observed, That a whole Province, County or Hundred may prescribe in *non decimando* of Woods, as in the Wilds of Kent and Suffex, and other places, and therefore the Commons in 17 E. 3. upon the making of the aforefaid Canon moved in Parliament, That no man should be drawn in Plea in the Court Christian for the Tythes of Wood or Under-wood, except in such places where such Tythes have been used to be paid; for by the strict Letter of this Canon, Tythes were to have been paid of all manner of Wood, great and small, in all places; to which the answer is recorded, *Let it be done in this also, as hath been done before time.* Rolls 1.637.f. Prescription of not tything of Wood.

The manner of the payment of Tythe-wood must either be by the measure of the ground by Poles, Perches, &c. as 'tis in some parts of *Lincolnshire*, or every tenth Faggot, Billet, &c. as 'tis paid of Corn and other things; but in this, as in all other Cases, the custom of the place is to be observed. The manner of paying Tythe wood.

But no Tythe shall be paid of Wood cut for Hop-poles to be used in the same Parish, where the Parson hath the Tythe of the Hops. White versus Aarch, M. 15 Jac. C. B.

CHAP. V.

The fifth Chapter shews where, and in what cases Tythe is due for the Herbage or Agistment and Pasturage of Cattel, and who is to pay the same.

In what Cases Tythe Herbage is due.

The Canon. Lindwood c. Quoniam propter.

I Am now come to speak of the Tythe of Herbage, Agistment or Depasturing of Cattel, for which I find no Canon, save a Clause of a Provincial Canon of Robert Winchelsey, dated 1305. in these words :

De pasturis autem & pascuis tam non communibus quam communibus statuimus, quod decimæ fideliter persolvantur, & hoc per numerum animalium & dierum, ut expedit Ecclesiæ.

The Tythe of the Herbage or Agistment of Cattel is due, where the Owner or Farmer of any Lands, depastures the same with barren Cattel that yield no profit at all to the Parson; which is a tenth part of the yearly value of the ground so eaten, but commonly a twentieth part is accepted; but in this, as in all other Tythes, the Custom and Usage of the place is to be observed.

Cro. Car. 237.

559.

Jones 254.

Who shall pay it.

Cro. El. 365.

2 Inst. 651.

Cro. Car. 237.

559.

Hetley 93.

Rolls 1. 641.

a. 9. o.

If the Owner of the Land agist it with Foreigners Cattel, then the Owner of the Land shall pay the Herbage Tythe; but if he let the ground to a Tenant, then the Tenant is to pay it.

But no Herbage Tythe shall be paid for the Agistment of Beasts bred for the Plow and Pail, and so employed in the same Parish; nor for Beasts

Beasts fed and spent in the Owners house in the same Parish. Rolls 1.641. ro. 4.

So if a man eat a ground with his own Saddle Horses, he shall pay no Tythes for the same; but if an Inn-keeper eat up a ground with Guest horses, he shall pay Tythes for the Herbage of them. Bulst. 1. 171. Poph. 126. 142. Wild. versus Lampton, T. 15 Jac. B. R. per 3 Inst. versus

If a Forreigner that lives in another Parish depastures a ground with Cattel bred for the Plow and Pail, to be imployed in a Forreign Parish, he shall pay Tythe for the Agistment of such Cattel. Houghton. Saddle Horses. Rolls 1.641. c. 4, 5. Beasts bred for the Plow and Pail.

And there is no difference between the Case of a Parishioner and a Forreigner, where the ground is eaten with unprofitable Cattel, and not bred for the Plow and Pail, &c. Saddle Horses and fatting Cattle, as aforesaid, to be spent in the Parishioners House; but that the Parishioner, as well as the Stranger, shall pay Tythe: But for the breeding of Cattel for the Plow and Pail, &c. conduces to the profit of the Parson in his other Tythes, and therefore no Herbage ought to be paid for the Agistment of them.

No Tythe is due to the Parson for the Herbage of Beasts *feræ naturæ*, as Deer, Conies, &c. without a special Custom. 2 Inst. 651. Harbage of Beasts feræ naturæ, F.N.B.

Fitzherbert in his *Natura Brevium*, seems to be of Opinion, That there is no Tythe due for the Herbage or Agistment of Cattel, and adds this reason, because they pay Tythe of the Cattle there depastured, which proves his meaning to be, that there is no Tythe Herbage due, where the ground is depastured with profitable Cattel. 53-g.

*Pasture eaten
with mixt Cat-
tel.*

Rolls 1. 641. q.
20.

Quere.

Rolls 1. 646.

2. 6. 7.

*Beasts of the
Plow.*

*Ground eaten
with mixt
Cattel.*

*Tares and
Vetches eaten
green.*

Rolls 1. 646.
2. 6. 7.

Rolls 1. 647. a.
8. & 16.

*Of what Cattle
Herbage is due.*

Rolls 1. 646. a.
13.

Rolls 1. 647. a.
15.

If a ground be eaten with profitable Cattel, as Milch Cows, Ews, Lambs and Cattel bred for Plow and Pail, &c. and also with barren and unprofitable Cattel, and the profitable Cattel exceed in number, it should seem the greater part being profitable, should free the rest, *tamen inde quere.*

No Tythe Herbage is to be paid of the Agistment of Oxen, Horses or Beasts of the Plow, employed and used in the same Parish, for they are profitable Cattel to the Parson. If a Ground be eaten with barren and unprofitable Cattel, and profitable Cattel together, and the profitable Cattel are the less in number, I conceive there's no doubt but the Landlord must pay Tythe in kind for the profitable Cattle, and Tythe of the Herbage for the rest, and not Herbage for the whole.

If there be a Custom in the Country to sow Tares, Vetches, &c. and to eat them green upon the ground before they are ripe, with Horses and Beasts of the Plow, no Tythes shall be paid for the same.

If a Stranger or Parishioner buy barren Cattel, and depasture and feed them for Sale, he shall pay Tythe for the Herbage of them.

If a man buy Oxen, Steers or Horses, and depastures, and after sells them, and doth not, without fraud, imploy them in the Plow, he shall pay Tythes for their Agistment: And if he work them fraudulently, to defeat the Parson of his Tythes, it will not serve his turn.

So if a man buys or rears young Cattel, and depastures them in a Parish, and does not imploy them there for a Plow or Pail without fraud, as hath been said, he shall pay Tythe for the Herbage of them.

But

But for the Graſs of Fallows no Herbage P.7 Jac.C.B.
ſhall be paid, becauſe it is for the bettering of Parſons Law.
the Parſon's Tythes in the year following ; nor
for the graſs of Stubbles.

CHAP. VI.

*The ſixth Chapter ſhews where, and in
what manner the Tythes of Calves,
Milk, Cheeſe, Wool, Lambs, Piggs,
&c. are payable.*

IN the payment of theſe ſort of Tythes, I do not obſerve that the Common Law croſſes
the Canon in any thing material, and therefore I ſhall recite you the Provincial Canon made
by Robert Wincheſſey, and his Clergy Anno Dom. 1305. which is to this effect :
*How the Tythes of Calves,
Milk, Wool,
Lambs, &c.
are to be paid.
It is doubted
whether this
Canon were
made by him, or not. See Lindwood in the Gloſſ.*

*De nutrimentis autem animalium, ſcilicet de The Canon.
agnis ſtatuiſimus, quod pro ſex agnis & infra Lindwood c.
ſex oboli dentur pro decima ; ſi ſeptem ſint agni Quoniam prop-
in numero, ſeptimus agnus detur pro decima ter.
Reſtori : ita tamen quod Reſtor Eccleſiæ qui
ſeptimum Agnum recipit, tres obolos in recom-
penſationem ſolvat parochiano à quo decimam
recipit : Qui octavum recipit, det denarium :
Qui vero nonum, det obulum parochiano, vel
expectet Reſtor uſque ad alium annum, donec
plenary decimum agnum poſſit recipere ſi malu-
erit ; & qui ita expectat ſemper exigat ſecun-
dum Agnum meliorem vel tertium ad minus de
agnis*

agnis secundi Anni, Et hoc pro expectatione primi anni. Et ita intelligendum est de decima lane: Sed si oves alibi in Hyeme & alibi in Estate nutriantur, dividenda est decima; similiter si quis medio tempore emerit vel vendiderit oves, & certum sit à qua parochia illæ oves venerint, earundem dividenda est decima sicut de re quæ sequitur duo domicilia: Si autem incertum fuerit, habeat illa Ecclesia totam decimam, infra cujus limites tempore tonsionis inveniuntur: De lacte vero volumus quod decima solvatur dum durat, videlicet de caseo tempore suo, & de lacte autumno & Hyeme, nisi parochiani velint pro talibus facere competentem redemptionem, & hoc ad valorem decimæ & commodum Ecclesiæ.

How Wooll and Lamb is to be paid.

By this Canon the payment of the Tythes of Wooll and Lambs is settled in this manner, That if the Parishioner have under seven Lambs or Fleeces, he shall pay a half peny for every Lamb and Fleece; and if there be seven Lambs or Fleeces, and under ten, then the Parson or &c. is to allow a half peny for every one that is wanting; but where this Canon gives the Rector election to take Tythe in this manner, or let them run on till a Lamb or Fleece be due in the insuing year, that is not allowed by our Law; for Tythes must be paid annually; where Sheep are kept in one Parish in Summer, and another in Winter, the Tythes are to be divided: So if one buy in Sheep out of another Parish, the Tythe is to be divided, i.e. to each Rector, &c. his proportion for the time they were respectively kept in the respective Parishes; but if it be not known from whence Sheep so bought in came, then the whole Tythe is to be paid, where the Lambs fall, and the Sheep are shorn. By

Latch. 254.
P. 14 El. Harpurs Rep.
Rolls 2. 308.
v. 21.
And this agrees with the Levitical Law, Decimam partem seperabis de cunctis fructibus quæ nascuntur in terra per annos singulos &c. Deut. c. 14. v. 22. & 23.

By the Canon the Tythe of Milk is to be paid in Cheefe whilst the Parishioner makes Cheefe ; but in Autum and Winter it is to be paid in kind : But this part of the Canon is generally over-ruled by the custom of the place ; for in many places they pay the Milk in kind all the year ; in some places they pay only Cheefe , and in some neither Cheefe nor Milk, but some small rate for it : And in some Countries they prescribe to pay no Tythe of their Milk at all ; and the custom of the place in this, as in all other Tything, is to be observed notwithstanding the Canon : But for the better explanation of the meaning of this Canon, there was a second Canon made, but the date thereof I cannot attain to ; the Tenor whereof follows :

Quoniam, ut audivimus, super decimis & nu- Lindwood c.
trimentis animalium inter Ecclesiarum Rectores Quoniam audi-
propter amotiones pecorum ad diversarum paro- vimus.
chiarum pasturas diversis anni temporibus con- Canon where
tentiones multimodæ oriuntur : Nos viam pacis Sheep, &c. shif
preparare volentes statuendo definimus & de- their pasture
finiendo statuimus, quod ad Ecclesias in quarum from one Parish
parochiis oves à tempore tonsionis usque ad Fe- to another.
stum Sancti Martini in hyeme continue pascun-
tur & cubant, Decima lanæ lactis & casei e-
jusdem temporis, licet postea amotæ fuerint ab
illa parochia & alibi tondeantur, integre per-
solvatur ; & ne fraus fiat in casu prædicto,
precipimus, quod antequàm oves amoveantur à
pasturis vel etiam distrabantur, Ecclesiarum
Rectoribus sufficienter de solvenda decima ca-
veatur. Quod si infra prædictum tempus ad
diversarum parochiarum pasturam transferan-
tur, quælibet Ecclesia pro rata temporis portione
decimam

decimam recipiet earundem minori triginta dierum spatio in rata temporis minime computando. Si vero per totum tempus prædictum cubant in una parochia & pascantur continue in alia, inter ipsas Ecclesias decima dividatur. Quod si post Festum Sancti Martini ducantur ad pascua aliena, & usque ad tempus tonsionis in una vel diversis parochiis sive in propriis pasturis dominorum suorum sive alterius cujuscunque pascantur, habita ratione ad numerum ovium pascua æstimentur & secundum æstimationem pascuorum ab eorum dominis exigantur decima: Decima vero lactis & casei de vaccis & capris proveniens ubi cubant & pascuntur, ibi solvatur. Alio quin si cubant in una parochia & pascuntur in alia parochia, decima inter Rectores dividatur omnino. Agni vero, vituli, pulli Equini & alii fætus decimales habita ratione ad loca diversa ubi gignuntur, oriuntur & nutriuntur, & ad moram quam traxerint in eisdem, particulariter decimentur. Quid vero pro decima debeat, ubi lac propter paucitatem vaccarum vel ovium ad caseum faciendum non sufficit; Et quid pro agnis, vitulis, pullis equinis, velleribus, aucis, aut aliis hujusmodi, de quibus propter eorum modicitatem decima certa dari non potest, consuetudini locorum duximus relinquendum. Item præcipimus quod si quis post Festum Sancti Martini oves occiderit, vel si oves quovis casu fortuito moriantur; Decimam legitimam parochiali Ecclesiæ solvere non post ponunt. Et si oves extraneæ in alicujus parochia tondeantur, Decima ibidem tradetur Rectori Ecclesiæ, nisi sufficienter doceri posset quod pro decima alibi satisfactum ut solutionem ibidem faciendam modo legitimo valeat impedire.

There

Milk and
Cheese.

There may some question be made upon the first Paragraph of this Canon, whether the Rector, where the Sheep are kept from shearing till *Martlemas*, should have the whole Tythe of the Sheep for the whole year? But Mr. *Lindwood* in his Gloss conceives it is intended the whole Tythe that ariseth during that time, which for Sheep will be nothing at all; but certainly it were very unreasonable that the Rector of the Parish where Cattel are kept but for half the year, should have the whole Tythes, and it cannot be intended to be any more than the proportion for the time they are so kept.

But by this Canon, if Sheep be kept less than thirty days in any Parish, no rate is to be allowed the Rector of that Parish where they are kept so small a time.

If Sheep be bought in a little before Share-day, and it is not known that they answer the Tythes elsewhere, the whole is to be delivered to the Rector of the Parish where they are shorn.

Sheep kept less than thirty days.

Where the Milk is so little that it will not make Cheese, or the Calves, Lambs, Fleeces, Colts, Geese, &c. are so few in number that there will none fall to the Parson, the Canon gives no rule of Tything in that case, but refers it to the custom of the place: But the Canonists generally hold, that custom to pay less than a tenth part is not binding; for says *Lindwood*, *Quod laici minus solvant quam decimam non potest consuetudine introduci, quia esset contra jus divinum; plus tamen potest deberi ex consuetudine.* And concludes, *Quod autem hic loquitur de consuetudine locorum, intelligas de tali consuetudine quæ non excludit solutionem decimæ*

Custom to pay less than the value of Tythe. Verb. consuet. loc.

decima, sed de tali quæ limitat ipsius decimæ solutionem ad commodum Ecclesiæ, scilicet ad verum valorem vel amplius: Herein I perceive the Canonists and Common Lawyers agree, that a custom to be free from payment of any Tythe, or a rate for it, is not good, except it extend to a whole Country, County, &c. and that where there is competent livelyhood for the Minister beside; but the Common Law allows of Customs and Prescriptions, where mony or some other thing is paid in lieu of Tythes, though not to the full value, as shall hereafter be made appear in its proper place.

By this Canon it is provided, That where Cows feed in one Parish, and lodge in another, that the Tythes shall be divided.

Poph. 197.

For the Tithes of Lambs, Calves, Colts, &c. the Tythe of them by this Canon is to be apportioned with respect to the places where they were engendred, brought forth and nourished.

If a mans Sheep dye or be killed after *Martlemas*, a proportionable Tythe must be paid for them.

The time when Calves, Lambs, Pigs, &c. are to be paid.

The time of the payment of Lambs, Kids, Calves, Pigs, &c. is regularly when they are so old, that they may be weaned and live without the Dam, unless the Custom of the place confine the payment to any certain time or age, and Wool is to be paid at Sheer-day.

Lindwood c.
Quoniam propter verb. lana.

Several mens Sheep depasture together.

If several mens Sheep depasture together in one flock, or under one Shepherd, yet this shall not make them to be tythed together, but every Owner shall pay his Tythe of them by himself; but if the Head of a Family have his Flock mixt with his Childrens Sheep, which are under
his

his tuition, and he takes the profit of them to his own use, in that case they shall be tithed together.

It hath been resolved that where Tithe Flee-
ces of Wool are paid, there shall be no Tithe
paid of the locks and belts; but this seems to be
intended of locks casually lost.

Cro. El. 363.
T.
Wool locks.
More 911.
Rolls 1.645.2.
14, 15, 16.
Bulstr. 1.3.242.
Neckings.

There is a Custom in some Countries to
shear their Sheep about the necks at *Michaelmas*,
that the Wool may not in Winter be pulled off
with Bryers, and for this sort of Wool without
fraud, it hath been held that no Tithe shall be
paid; and so of the birling of Sheep without
fraud, no Tithe is to be paid.

Rolls 1.646.2.
17.
Rolls 1.646.2.
18.
Sheep dye of the
Rot.
Latch. 254.

If a Man's Sheep dye of the Rot or other dis-
ease, or if the owner kill or sell them as hath
been said, he must pay Tithe for the Wool ra-
tably.

Though the Canon direct one of seven to be
paid only for Wool and Lambs, yet in most pla-
ces the same order by Custom is observed for
Calves, Colts, Pigs, Geese, &c. which Custom
I presume took its rise and beginning from this
Canon.

By the Canon Law where there is no custo-
mary manner of Tithing for the Tithe of Pigs,
Geese, Calves, Colts, &c. where they fall short
often, the tenth part of the value is to be paid.

Cap. Sancta Ec-
clesia verb. eo-
rum valorem.
Lindwood 6.
Quoniam prop-
ter verbis de
Casseo.

And note, that where Tithe Milk is paid in
kind, there no Tithe Cheese is due, and so where
Tithe Cheese is paid for so long, no Tithe
Milk is to be paid.

Lastly, note, that where any Person hath
Cattle Tithable going in a Ground or Com-
mon whereof the Parish is not known, the Tithe
is to be paid in the Parish or place where the
party

Stat. 2 E. 6. c. 13.

Lindwood *de*
decimis, cap.
Quoniam audi-
vimus.

party lives that owns the Cattle.

Where Sheep lodge in one Parish, and depasture in another, there the Tythes are likewise to be divided.

CHAP. VII.

The seventh Chapter shews where, and in what manner the Tythes of Seeds, Fruit, Mast, Bees, &c. is to be paid.

How the Tythe
of Seed, Fruit,
Mast, Bees, &c.
is to be paid.

TYthes are to be paid of the Fruits arising in Orchards and Gardens in their proper kinds when gathered, unless there be some *modus* or rate Tythe paid in lieu thereof, and so of the Seed of Flax, Hemp, &c. is to be paid when drest up; but this must be understood where the Tythe of the Hemp and Flax is not paid till after the Seed is gathered; for if the Tythe be paid before the Seed threshed, ripld out or gathered, then no Tythe Seed is to be paid of the rest. The Tythe of Crabs, Mast, &c. is likewise to be paid, when the same are gathered, or satisfaction is to be given if eaten with Swine on the ground. But in a Case reported by my Lord Keeper *Littleton*, it is held that no Tythes are to be paid for Acorns which fall from the Trees, and are eaten up by the Swine. *Ideo quære.* And the Tythe of Bees is to be paid by the tenth part of the Honey and Wax: The Canon is that

Lindwood c.
Sancta Ecclesia.
Rolls 1.640. q.
10.
Co. 11.49. a.
Cro. Car. 559.
Littl. Rep. 40.

Jones 447.
F.N.B. 51. g.
Rolls 1.635. c.
1.
Cap. *Quoniam*
propter.

De Apibus, sicut de omnibus aliis bonis juste
acquisitis quæ renovantur per annum statuimus
quod

vide lib. m.

Act. 448. 3. Cro. 404.
Nels. 21. Codex 407.

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quod decimæ solvantur & exigantur debito modo. *Ita intellegas Decimum fore solvendum non. Quod etiam de*

Nota, That it was held in the Case of *Crouch and Risden*, that there can be no *modus* for Hops, because of late date; but they may be included in a *modus pro decimis minutis*. And *Twisden* said in this Case, that the Law was not settled in this Case, how the Tythe of Hops should be paid by the pole, pound, or &c.

et melle &c. Quod etiam de
collecteda sunt sol.
Siderfin. 443. vendit est
Decima.

CHAP. VIII.

The eighth Chapter shews where and in what manner Tythes of Pigeons, Conies, Fish, Deer, and other Beasts and Birds terræ naturæ, are Tythable.

BY the Common Laws of England there is no Tythe due for Birds or Beasts that are *feræ naturæ*, and therefore it hath been resolved, That no Tythe shall be paid for Fish taken out of the Sea or River, unless by Custom, as in *Wales, Ireland, Yarmouth, &c.* neither for the same reason, is any Tythe due of Deer, Conies, &c: but if due by Custom it must be paid.

Whether Tythe be due of Beast or Birds feræ naturæ.
Cro. Car. 264..
339.
March. 87.
Hetley 13.
Rolls 1. 635.
c. 4, 6, 7.
Noy 108.

And if a man keep Pheasants, or other wild Fowl within limits, by clipping their wings, yet no Tythes shall be paid of their Eggs or Young not being reclaimed, for as much as if their Wings were not cut, they would fly away.

St. 2 E. 6. c. 13.
Rolls 1. 635. c.
3.
Rolls 1. 636.
c. 5.

P

But

Hetley 147.

Rolls 1.644.

2.4, 5, 6.

More 599.

But of young Pigeons in Dovecoats or in Pigeon-holes about a mans House, Tythe shall be paid if they be sold; but if they be spent in the Family, no Tythe shall be paid for them.

It is said in *Houghton* and *Princes* Case in *More's* Reports, That no Tythes shall be paid of tame Turkeys, Pheasants or Partridges, nor their Eggs, *quia feræ naturæ*; but I believe the Book is misprinted, for after they are reclaimed, they cannot be said to be *feræ naturæ*.

CHAP. IX.

The ninth Chapter shews what Tythes are to be paid for Mills, and what kind and nature they be of.

Whether Tythes are to be paid of Mills, and how.

THE Canon is, Cap. *Quoniam propter De proventibus autem molendinorum volumus quod decima fideliter & integre solvantur.*

And *Articuli Cleri*, cap. 5. is to this purpose.

Si quis in fundo suo molendinum erexit de novo, & postea à Rectore loci exigatur decima de eodem, exhibetur Regia prohibitio sub hac forma. Quia de tali molendino hactenus non fuerunt soluta, prohibemus, &c. Et sententiam excommunicationis, si quam hac occasione promulgaveritis, revocetis omnino Responsio: In tali casu nunquam exivit Regia Prohibitio de Principis voluntate, qui & decernit talem perpetuum non exire.

It

It is made a question first, Whether any Tythes are due for Mills, not? which Sir *Edward Coke* in his second Institutes says, was never judicially determined that he knows of: And it was held in the Case of a Fulling-Mill no Tythe was due; for of profits that come only by the labour and industry of man no Tythe is to be paid, and the same reason holds for Corn-Mills. 2 Inst. 622. Littl. Rep. Cro. Car. 523. 524.

The next question is, admitting that Tythes are due for Mills, Whether the same be predial or personal?

Sir *Edward Coke* is of Opinion, That in Case any Tythe be due, it is only a personal Tythe, being acquired by the labour and industry of the Miller, and takes no increase from the ground to make it predial: And the Statute of 2 E. 6. is, That every person shall justly set forth, yield and pay all predial Tythes in their proper kinds, as they arise and happen, which cannot be applyed to the Millers taking of the Toll-dish, nor to Fulling-Mills, Iron-Mills, Paper-Mills, &c. which are all comprehended under the word Mill, and no Tythe can be paid *in specie*; for if the Parson should have every tenth Toll-dish, then it would often happen, that he should have twice Tythe of the same Corn, which is against the Law; and such Tythe as the tenth Toll-dish has never been paid in any place that I have known or heard of.

And if it be a personal Tythe, as there is great reason that it can be no other, then it must be paid with the deduction of the expences and charges, and it is not payable but in such places where personal Tythes are payable by Custom.

from: See more hereof in the twenty second Chapter.

Cap. *Quoniam
propter verbo
integre.*

But the Canonists hold, That the tenth Toldish shall be paid as a predial Tythe, without deduction of expences, which doth not agree with the Common Law, and is therefore not binding.

But in many places there is a rate Tythe paid for Mills, which is good by Custom.

CHAP. X.

The tenth Chapter shews, whether Tythes ought to be paid of Hawking, Hunting, Fishing, Fowling, &c.

Tythe of Hawking, Hunting, Fishing, Fowling, if due.

THESE are all comprehended under personal Tythe, for that these things, being obtained by the labour and industry of the Party, and the things obtained are *feræ naturæ*, and not of their own nature tythable in their proper kind, unless the particular Custom of the place require it, and therefore I shall refer these to the twenty seventh Chapter, where I shall speak of personal Tythes.

CHAP.

CHAP. XI.

The eleventh Chapter is concerning the Tythes of Ducks, Geese, Hens, Swans, and other domestick Fowls and Birds.

THe Tythe of all tame and domestick Fowl is to be paid in their Eggs or young in their proper kind, according to the Custom of the place: Geese, Ducks and Swans are usually paid in their kind, but of Hens and Turkeys, commonly in Eggs, but therein the Custom of the place is to be observed. But note, That where they pay Tythe of the Eggs, there is no Tythe of the young, nor *è converso* Tythe Eggs paid, where they have the Tythe of the Young,

Of the Tythes of domestick Birds and Fowl.

CHAP. XII.

The twelfth Chapter shews of what things Tythes shall not be paid.

TYthes regularly are not due of dwelling Houses, and yet a *modus* may be due for a House as well as for Land; and it shall be intended, that it was a *modus* for the Land before the House was built.

Of what things Tythes shall not be paid.
Co. 11. 16. a.
Hob. 11. 1.

No Tythes shall be paid for Hounds, Apes, Popinjays, & *similia*, because they are things only of pleasure.

Things of pleasure.
11 H. 2. 4. b.
2 Inst. 651.

Things that increase not.

Rolls 1. 636.d.

1.

Doct. & Stud.

174.

More 908.

Cro. El. 277.

More 908.

2 Inst. 651.

Rolls 1. 637.

c. 1.

Doct. & Stud.

174.

Baxter versus

Hope.

H. 8 Jac. C. B.

rot. 1. 109.

St. 2 E. 6. c. 13.

More 910.

Rolls 1. 640. q.

12, 13, 16, 17.

Lit. Rep. 311.

More 909.

Neither shall any Tythes be paid of those things which do not increase from year to year; and therefore no Tythes shall be paid for Stone got out of Quarries, Pit-coals, Turfs, Slates, Bricks, Quarrels, Tyles, Earthen Pots, nor of any thing made of Earth, nor of Marle or Lime got for the Improvement of the Ground; nor of Tin, Lead, Copper, or other Metal gotten out of the Ground, but by Custom Tythes of such things may be due and payable.

Servants in Husbandry shall not pay personal Tythes, neither shall any Tythes be paid of Marriage Goods.

No Tythes shall be paid of Aftermaths, Stubbles, or Rakings of Corn without fraud.

No Tythes shall be paid of Birds or Beasts that are *feræ naturæ*, &c. unless they be fold.

Tythes shall not be paid of Broom or Gorse used for fuel within the Parish.

CHAP. XIII.

The thirteenth Chapter shews what force Custom has, as well in the form and manner of Tything, as in the discharge of the payment thereof; and wherein Custom and Prescription differ.

St. 2 E. 6. c. 13.

Wheat force Cu-

stom has in the

manner of Ty-

thing.

BY the Statute of 2 E. 6. it is enacted, That every of the King's Subjects should from thenceforth truly and justly, without fraud or guile,

guile divide, set out, yield and pay all manner of their predial Tythes in their proper kinds, as they should arise and happen in such manner and form as had been of right yielded and paid within forty years next before the making of the said Act, or which of right or of custom ought to have been paid.

In this Act there are three qualifications.

1. It injoyns the payment of such Tythes, as had for forty years then past been of right yielded and paid.

2. Such as of right ought to have been paid.

3. Such as by Custom ought to have been paid.

Tythes due by Custom are of two kinds.

1. Where there is a *modus decimandi*, and by Custom Mony, or some other thing, is paid in lieu of Tythes.

2. Where Tythe hath by Custom been paid of things not tythable, as of Lead in *Derbyshire*; Tynn in *Devonshire* and *Cornwall*; fishing in the Sea, as in *South-wales*, where the Custom is, That if the Parishioner of one Parish land his Fish in another, the Tythes are divided between the Parson of the Parish where the Fisher lives, and the other where he landed his Fish; but if the Parishioner land his Fish in the Parish where he himself dwells, then the Rector of that Parish has the whole Tythes.

And this is confirmed by the Statute of 2 E. 6. cap. 13.

And I have heard that in some Countries they pay Tythe-Ale, and Tythe of Limekilns, &c. which in their own natures are not tythable. Tythe-Ale is said to be paid at *Market-Raising* in *Lincolnshire*.

And as by Custom things may be made tythable, which in their own natures are not so; or one thing may by Custom be paid in satisfaction or discharge of another: So Custom hath a great influence upon the form and manner of Tything, for the direction of the time, place, and order of payment of Tythes.

*Custom of not
Tything, where
good.*

And as Custom may make things tythable, which of their own nature are not tythable; so a Custom of a Province, County, or Hundred may discharge the payment of Tythe of a thing which in its own nature is tythable, so there be a competency for the maintenance of the Ministry beside.

Hob. 266.
Bulstr. 2.245.
Doct. & Stud.
cap. ult.
Rolls 1. 642. b.
1. & p. 5, 6, 8.
Co. 11. 16. 2.

And therefore in the Wilds of *Kent* and *Sussex* they do pretend by Custom to be free from the payment of Tythe Wood, or any thing in lieu of it; and so in several Countries they pay no Tythes of their Milk, *Dunton vers. Moyle*, *Finch*. 36 *Eliz*.

*Custom to pay
Tythes of things
not tythable.*

And as Custom may prevail in not Tything; so it may, as has been said, make things tythable which in their own natures are not tythable, as the Rent of Houses, Pigeons eaten in the House, Wood spent in the House: And by Custom Tythe may be paid of Salt, Brick, Lime, Ale, Chickens, and other things not tythable.

Rolls 1. 642.
5. 7.

*Difference be-
tween Custom
and Prescripti-
on.*

Now the difference between a Custom and a Prescription is this; every Custom must have dimension, and alledged to be within some certain Province, County, City, Hundred, &c. for if it be a general Custom of *England*, it is Common Law, and such Custom must be common to all within such limits; but if it be confined to one certain Person, House, Land, or other thing,

thing, there it becomes a Prescription which is a younger daughter to Custom; and therefore when a man comes to plead a Custom, the manner of pleading is to alledge, that within such a County, Hundred or Town, there is, and from the time whereof the memory of man is not to the contrary, there hath been such a Custom used and approved in the same, that is to say, that &c. alledging the Custom as it is.

But when you come to plead a Prescription, *How to plead a Prescription.* you only alledge that you, and all those whose Estate you have in such Lands, have time out of mind paid so much annually to the Parson of D. in full satisfaction and exoneration of all the Tythes arising upon the said Lands, &c.

So that Custom and Prescription differ in *Wherein Custom and Prescription differ.* these things, that Custom must be limited and confined to some certain place; Prescription is at large; Custom is Common to all the Persons and Lands within the limits wherein it is alledged, but Prescription is confined to certain Persons or Things: But in this they agree, That they must be constant without interruption, and perpetual from the time whereof the memory of man is not to the contrary; for if there have been frequent interruptions, there can be no Custom or Prescription obtained; but after a Custom or Prescription is once duly obtained, a disturbance for ten or twenty years *1 Inst. 114. b.* shall not destroy it; for *Multiplex interruptio* *2 Inst. 653.* *non tollit prescriptionem semel obtentam.* *2 Inst. 654.*

But I must here observe to the Reader, that *How the Ecclesiastical Laws look upon Customs and Prescriptions.* though the Civil and Ecclesiastical Laws do in some Cases take notice of Custom and Prescription; yet in this they differ from the Common

*In what they
differ from the
Common Law
in this matter.*

mon Law, that they allow a usage for forty years to be a good proof of a Custom or Prescription, grounding their Judgments upon a decretal Epistle of Pope *Alexander the Third, Anno Domini 1180*. But this Kingdom never allowed of that Epistle, or yielded any obedience thereunto: So that as well in Spiritual as Temporal Prescriptions and Customs, if they come to be tried at Common Law, as all Prescriptions concerning Tythes must be, they must be proved to have been used beyond the memory of any man to the contrary; for if any man living, or any Authentick Record, or other evidence prove it was otherwise at any time since the first year of *Richard the first, which was Anno Domini 1189*. the Custom or Prescription fails.

2 Inst. 553..

*What Influence
Custom and Pre-
scription have
in the manner
of Tything.
27 H.8.c.20.*

And the influence Custom and Prescription have in the manner of Tything, is confirmed by three several Acts of Parliament.

First, By the Statute of 27 H. 8. whereby it is enacted, That every Subject of England, &c. according to the Ecclesiastical Laws and Ordinances of the Church of England, and after the laudable Usages and Customs of the Parish, or other place where he dwelleth or occupieth, shall yield and pay his Tythes, Offerings, and other Duties of Holy Church, &c.

By this Statute the Ecclesiastical Laws and Canons are affirmed for the payment of Tythes; but in such Cases as they are contrary to the Common Law, or Customs of the place, they do not bind.

Next this Act confirms and allows all Usages and Customs of the place where the Tythes arise, which are to be preferred before all

all Canons and Constitutions in manner of Tything.

The next Statute is that of 32 H. 8. where-^{32 H. 8. c. 7.} by it is enacted, *That every Person, &c. shall fully, truly, and effectually, set out, yield to pay all and singular Tythes and Offerings aforesaid, according to the lawful Customs and Usages of the Parishes and places where such Tythes or Duties should grow, arise, come, or be due.*

This Act seems only to extend to customary Tythes, and so doth the Statute of 2 E. 6.^{2 E. 6. c. 13.} which is,

That every of the Kings Subjects should from thenceforth, truly and justly, without fraud, or guile, divide, set out, yield and pay all manner of their predial Tythes in their proper kind as they arise and happen, in such manner and form as hath been of right yielded and paid within forty years next before the making of the said Act, or of right or custom ought to have been paid.

But more of these Statutes in their proper place. I shall now proceed to shew what Liberty and Priviledge the Parson, Vicar, &c. hath in the Grounds where the Tythes arise, for the drying, ordering, and carrying away their Tythes.

CHAP. XIV.

The fourteenth Chapter shews what Priviledge and Liberty the Parson, Vicar, &c. hath in the ground where the Tythes arise, for the drying, making, ordering and carrying away the same.

2 E.6. cap. 13.
What privi-
ledge the Par-
son, &c. hath in
the Lands
where the Tythes
grow.

BY the Statute of 2 E. 6. it is enacted, That at the Tything time of predial Tythes, it should be lawful for every party to whom any Tythes ought to be paid, or his Deputy, or Servant, to see the said Tythes to be set forth and severed from the nine parts, and the same quietly to take and carry away.

Rolls 2. 302.
q. 19.

This Statute, as to the taking and carrying away, seems only declarative of the Common Law: But as to coming upon the Lands to see the Tythes set forth, seems to me to be a new Authority given by this Law, for the Owners of the Land are *de jure* bound to set forth their Tythes duly and rightly; and if they fail therein, the Parson, Vicar, &c. have their remedies; and if the Parishioner do justly and truly set forth his Tythes, although the Parson, Vicar, &c. be not present, or had no notice given him to be present, yet this had been a good setting forth before this Statute: But it is a fair and just way to do it in the presence of the Parson, Vicar, &c. And note, This Act is warily penned in the singular number, that the party himself, his Agent or Servant may come to see

see the Tythes set forth, but must not come with a greater number.

And note, That the Parson, Vicar, Impropiator or Farmer cannot come himself, and set forth the Tythes without the licence and consent of the Owner of the Corn, Hay, &c. for if the Parson, Vicar, &c. shall of his own head Tythe the Corn, Hay, &c. of any Land-holder within his Parish, &c. and carry it away, he is a Trespassor, and an Action will lye against him for it. Jones 90.

But a Parson, Vicar, &c. may *de communi jure*, after the Tythes are set forth, come himself, or his Servants, and spread abroad, dry and stack his Corn, Hay, &c. in any convenient place or places upon the ground where the same grew, till the same be sufficiently weathered and fit to be carried into the Barn, &c. But the Parson, Vicar, &c. must not take a longer time for the doing thereof than what is convenient and necessary; and what shall be said a convenient and necessary time, the Law doth not, nor can define; for the quantity of Hay, Corn, &c. and the Weather in this case is to be considered; and what shall in this, and all other cases of like nature be said, a reasonable and convenient time is to be determined by the Jury, if the point come in issue triable by a Jury; but if it come to be determined upon a demurrer, or other matter of Law, the Judges of the Court where the cause depends are to resolve the same. Lindwood c. Quia quidem &c cap. Erroris damnabilis.

12 E. 4. 6. 2.
Rolls 1. 643.
x.2.

And if the Parson, Vicar, &c. shall exceed a convenient and necessary time in the drying, ordering, and carrying away their Tythes; and the Parishioner shall receive damage thereby;

an

Hughes Rep.

329.

Styles 342.

Styles 348.

Lampen verf.

Woodner, P. 1

Car. 1. B. R. per

Latch.

Halfey versus

Halfey, H. 6

Car. 1. B. R.

Rolls 1.643.

x.3.

an Action of the Case will lye against them for their negligence in this behalf.

But no Action will lye against the Parson, Vicar, &c. in such a case, unless the Parishioner have duly set forth his Tythe, and given notice thereof to the Parson, Vicar, &c.

And the Parson, Vicar, &c. may carry his Tythes from the ground where they grew, either by the Common way, or any such way as the Owner of the Land useth to carry away his nine parts.

But if the Owner of the Soil, after he has duly set forth his Tythes, will stop up the ways, and not suffer the Parson, Vicar, &c. to carry away his Tythes, or to spread, dry and stack them upon the Land, this is no good setting forth of his Tythes without fraud, within the Statute of 2 E. 6. but that the Parson, Vicar, &c. or other Owner or Farmer, may have an Action upon the said Statute, and may recover the treble value; or may have an Action of the Case for such disturbance, as I conceive; or he may, if he will, break open the Gate fence, &c. which hinders him, and carry away his Tythes; but in that he must be cautious that he commit no Riot, nor break any Gate, Rails, Lock, Hedges, more than necessarily he must for his passage.

Bulstr. 1. 108.

And note, That the Parson, Vicar, &c. when he comes with his Carts, Teams, or other Carriages to carry away his Tythes, must not suffer his Horses, Oxen, &c. to eat and depasture the Grass growing in the grounds where the Tythes arise, much less the Corn there growing or cut; but if his Cattle (as cannot be avoided) do in their passage, against the will of the Drivers, here and there snatch some of the Grass, &c. this is excusable.

And

And if the Parishioner duly set forth his Tythe of Hay or Corn, and will not permit the Parson, Vicar, &c. to make the Hay, or spread and dry the Corn, as he ought, it amounts to a subtraction of the Tythes, and the Parson may sue for the subtraction of such Tythes in the Spiritual Court, and no Prohibition lies in this Case.

Rolls 2.284.
f.21.

CHAP. XV.

The fifteenth Chapter shews to what Charges the Glebe-lands belonging to a Rectory, and the Tythes are Subject.

SIR Edward Coke tells us, *Quod nullus pro decimis, quæ sunt spirituales, de aliqua reparatione pontis, seu aliquibus oneribus temporalibus onerari debet.* 2 Inst. 641. What Charges Tythes and Church-lands are subject to.

That Tythes being Spiritual, were not subject to Temporal Charges at the Common Law.

And Sir Edward Coke is of Opinion, That at this day, if Tythes be in the hands of Temporal men, they are by reason of them contributory to Temporal Charges.

And upon a Doubt of Mr. Justice Yelverton, P.5 Car. 1. who was Justice of Assise in the Bishoprick of *Durham*, as Sir Nicholas Hide, heretofore Chief Justice of the *Kings Bench*, has reported, it was resolved by all the Judges of *England*, that Tythes are at this day chargeable with

Styles 162. per
Rolls.

Web versus
Batchler.

T. 1675. B. R.
per Hunt.

First-fruits.

See more of this
matter and
Tenth, 4 Inst.

120, 121.

* Cowel verbo
Annates.

How these differ
from the First-
fruits under the
Law. Vide Tho.

Aquinas 20, 2a,

786. Art. 4.

Polyd. Virgil.

De inventione
rerum, l. 1. c. 2.

p. 498.

with all charges imposed by any Act of Parliament, wherein they are not excepted, as upon the Statute of 43 *Eliz.* to the poor, and to maimed Souldiers, Kings Bench, Marshalsey, Bridges, &c. But they are not subject to any Charges Temporal, at or by the Common Law.

And so it was lately held by my Lord Chief Justice *Hales*, and the Court of *Kings Bench*, for Watch and Ward, and Repair of the Highways: And this Case then vouched by the Chief Justice.

But Tythes at this day are subject to pay First-fruits or Annates, in Latin *Primitia*, which are the first years profits of every Spiritual Benefice at a new Incumbents Entry into his Living*; they were anciently exacted by the Pope of Rome, when he had small Revenues to support the publick charge of his place. And *Polydore Virgil* tells us, *Ceterum nullum inventum majores Romano Pontifici cumularunt opes quam annatum quas vocant.*

And *Polydore Virgil* tells us, that Pope *Boniface* the Ninth first introduced them, though others ascribe them to *John* the 22d.

But some are of an Opinion (and not without reason) that Annates were much ancienter then Pope *Boniface* the Ninth, who entred upon the Papacy in the year 1389. and *John* the 22. not till the year 1410. But it appears by our Parliament Rolls, (which are infallible Evidence) that this payment had rought *England* in the 25th year of the Reign of *E. 3.* which was in the year of our Lord 1351. in which year there was a complaint made by the Commons in Parliament, that the Pope had reserved to his own Collation, as well the Abbies and
Priories,

Priorities, as also all other the great Benefices, whereof any Ecclesiastical or Religious persons had the Patronage; and that he had lately reserved all the Dignities in *England*, and the * Provenders in Cathedral Churches, by which * *Prebends*, I means the Pope had the First-fruits of all the suppose. said Benefices. By this complaint it should seem the Pope had yet got in but one Leg, that is, to have the First-fruits of those Livings, to which he himself collated: A pretty piece of Simony!

In the 50th year of the same King, the *Anno 1376.* Commons renew their complaint again, and *Rot. Parl. n. 100.* amongst many grievances from the Court of *Rome*, there complain'd of, one is, That the *& 6 H. 4. nu. 21.* Popes Collector that year (a thing never before done) had taken the First-fruits of every *6 R. 2. 50.* Benefice whereof he made provision or collation, whereas he was used to take First-fruits *1 R. 2. nu. 66.* only of Benefices vacant in the Court of *4 R. 2. nu. 44.* *Rome.*

And 9 *H. 4. cap. 8.* not in the print, there is a Statute expressly against payment of them upon the pain in the Statute of Provisors, which is a Premunire.

And if *Walsingham* says true, *summus Pontifex* (*Anno 1316.*) *reservavit Camerae suae, primos fructus beneficiorum omnium in Anglia, per triennium vacantium.* *Hist. Wals. p. 84, 45.*

So that it is apparent, that in some cases First-fruits were paid long before *Boniface* the 9th, or *John* the 22d; but perhaps the Pope before them had not made it an universal payment.

These were often complained of, as a great oppression upon the Clergy, as *Henricus Hostiensis*, who lived in the time of Pope *Alexander*

St. 26 H. 8. c. 3.

the 4th, witnesseth; but however upon the abolishing of the Popes Usurpations here in *England*, the poor Clergy were not acquit of this exaction, but the same was by the Statute of 26 H. 8. settled upon the then King and his Successors.

The First-fruits are not here in *England* rated at the full and utmost value of the Living they are to be paid for, but according to the valuation taken and made in the said 26 year of K. H. 8. and now used in the First-fruits Office.

1 Eliz. cap. 4.

And these First-fruits are by a Statute made 1 *Eliz.* not to be paid all at once; but one quarter of them is to be paid at the end of six months from the time of the Induction, Collation, &c. another fourth part at the end of twelve months, another fourth part at the end of eighteen months, and the last quarter part thereof at the end of two years.

1 Eliz. cap. 4.

And by a Statute made 1 *Eliz.* all Vicarages not exceeding ten pounds, and all Parsonages not exceeding ten marks, according to the valuation in the First-fruits Office, are discharged from the payment of First-fruits.

And if an Incumbent dye, or be legally removed out of his Living without fraud, then after such death or removal, the remaining half yearly payments of the First-fruits, which were not become due, are discharged by the said Statute of 1 *Eliz.*

St. 26 H. 8. c. 3.
When the First-fruits are to be paid.

And by that Statute the Dean and Canons of *Windſor* are discharged of the payment of First-fruits.

And by the Statute made in the 26th year of H. 8. before mentioned, it is enacted, *That every Archbishop, Bishop, Dean, Prebendary, Arch-*

Archdeacon, Parson, Vicar, &c. before he have any actual or real possession, or meddling with the profits of his Living (this must be between Institution, Collation and Induction) must pay or compound for, and give security for the payment of his First-fruits, in the First-fruits Office. And that an Obligation taken for the same should be of the force of a Statute of the Staple; and that if any such presume to enter into his Living before such payment or security given, or composition made, he is to forfeit double the value.

But his Majesty and his Royal Predecessors have not been severe in this case to take the penalty, but upon failure their Officers of the Exchequer have sent out Process to the Sheriff; to put the negligent Parsons, Vicars, &c. in mind of this duty, and upon coming in and paying the charge of the Process, and paying or giving security for the First-fruits, they are discharged.

But the Parsons, Vicars, &c. must be careful to pay in their half yearly payments, as the same become due, and take up their bonds, or else new Process will issue to the increase of their charge.

Perhaps some may be so curious that they will desire to know, why Vicarages not exceeding ten pound should be freed of this charge, and Parsonages of ten marks should pay them: Now the reason of that was, that the Vicarages in time of Popery, and when the Valuation was taken, had a great income by voluntary Offerings, which falling to little or nothing upon the dissolution of Monasteries, this favour was afforded them in their First-fruits.

Why Vicarages are charged higher in the First-fruit Office, than Parsonages.

The next charge Parsons and Vicars are subject to, are the Tenths, that is, a tenth part of the yearly value of all their Church Livings;

Tenths.

*It should seem
these were im-
posed by Boni-
face 8. to
maintain his
Wars in Sicily.
Extravag. com.
li. 3.p.296.
2 Inst.628.*

Stat.25 H. 8.

Stat.26 H.8.c.3.

this payment was first exacted from the Clergy by the Pope about the twentieth year of E. 1. and a Valuation was then made by his authority of all Church Livings, at which rate the Pope was answered his Tenth, but he never had any Tenth of such Land as was given to the Church after that time. These payments (as appears by our Histories) the Pope of Rome sometimes granted to the Kings of England, when the Kings pleased them, or rather when they feared their power; but upon the abolishing the Popes power, which was in the 25th year of H. 8. these Tenth were given to the King the year following by the aforesaid Statute of 26 H. 8. and to be paid at Christmas yearly, and the Bishop of the Diocese is to collect them, and they are to be paid according to the Valuation taken the same year, and now in the First-fruits Office, and are not paid that year the First-fruits are paid, but are allowed out of them, because 'tis intended that the King has the whole years profit.

Stat.26 H.8.c.3.

But immediately upon the Reformation many Clergy men scrupled, and denied to pay these Tenth to the King, being a duty properly due to the Pope, and therefore the refusal or neglect to pay them to the King, being certified by the Bishop *that had the Collection of them, is made a Cause of Deprivation not only of the Living, for which they refused to pay their Tenth, but also of all their spiritual Preferments.*

Stat.2 & 3 E. 6.
cap.26.

But by the Stat. of 2 and 3 E. 6. that severity was moderated, so that now the refusal or neglect to pay them, and so certified by the Bishop, makes only that Living void, for which
the

the Tenths shall be so refused. But his Majesty and his Royal Predecessors have rarely put the severity of this Law in execution, but make out Process in the Exchequer to compel the payment: however since the penalty is so great, every Clergy-man ought to be very careful to avoid the danger.

An Aparitor came to a Parson newly inducted, and told him he must pay his Tenths to such a person, naming him, at such a day and place four miles off; and this was adjudged no good demand to make his Living void, within the Statute, but such demand which shall make a Living void within the Statute, must be positive by one that hath power to demand and receive it.

More 541.

And note, that the Bishops Certificate is not peremptory, but may be traversed, and the party that demands the Tenth must be sufficiently authorized. See *Cro. Eliz.* 80.

There is a Provision made by an Act of Parliament in the 27 Year of H. 8. for those Incumbents that shall be forced to pay the Tenths due in the time of their Predecessors, that they may levy the same upon any Goods they can find of their Predecessors upon the Church Living; and if they be not redeemed within twelve days after they shall be distrained, that then the same shall be praised by two or three indifferent persons to be sworn, and so many of them sold as will satisfie the arrear with cost; and if no such Goods can be found, then the Successor to take his remedy against his Predecessor, his Executors or Administrators, or others to whom his Goods shall come, by Bill in Chancery, or in Action of Debt at Common Law.

*St. 27 H. 8. c. 8.
The remedy where the Successor pays Tenths due by his Predecessor.*

Procurations.

Sir John Davies Rep. 1, 2, 3.

See more of this matter Lindw. cap. ut singula Ecclesiastica, That by a Canon made by Steph. Langton about 1222. the Arch-Deacons were to bring but seven Horses in their trains, and stay but one day, and to invite no body.

31 H.8. cap. 13.

Cap. Quoniam autem verb. una tantum.

There is another charge, to which the Parsons, Vicars, &c. are subject for their Church Livings, which is called Procurations or Proxies; and these are duties due and payable to the Bishops and Arch-Deacons at the time of their Visitations, which are not paid by any certain Rule, but by some ancient Taxation; for anciently the Religious Houses and Clergy-men at their own charge entertained the Bishops and Arch-Deacons in their Visitations, but at length their attendants were so many, and their trains so great, that the Clergy and Religious Houses were horribly oppressed with entertaining of them; to avoid which, the Clergy and Religious Houses came to this composition, every one to pay such a proportion to their Visitors to be freed of that great oppression: and therefore the Canonists define them to be, *Exhibitio sumptuum necessariorum facta Prælati qui Diocæses peragrando Ecclesias subjectas visitant*, and this payment is continued to this day, not only of those Livings which are still enjoyed by the Clergy, but also of the Impropriations being saved by the Statute of 31 H.8. and confirmed by the Statute of 34 H.8: and remedy given for them with Costs, both in the Spiritual Court and at Common Law.

And note, that if there be a Parsonage and a Vicarage endowed, there is but one of them to pay Procurations, but which of them must pay, is to be directed by Custom, or the Indowment, if extant.

Note likewise, that Donatives are not to pay Procurations, because they are not within the Visitation of the Ordinary; and so for free Chappels, for the same reason.

And

And if there be a Parsonage which has a ^{Cap. Quamvis} Chappel depending on it, that is, where both ^{lex naturæ.} are in the Parsons cure, no Procurations are to be paid for the Chappel.

Synodals is another charge upon the Par-Synodals. sons, Vicars, &c. and is likewise paid to the Arch-Deacon, not by any certain Rule, but by some ancient Taxation; so that some pay more, and some less.

I must confess I cannot find how this payment first became due, but by the name it should seem to be a contribution to the Arch-Deacons charge in the Synods, they * being

* St. Jerome
in his Epistle to
Evagarius says,
Diaconi ele-
gant de se
quem industri-
um noverint, &
Archiadiao-
num vocent.

† But it should seem, that the Arch-Deacons claim these Synodals for their *Easter* Visitation: and the Bishops have laid some claim to them, but, as my Author conceives, without any just reason, the Arch-Deacon and his Officers performing the Labour, and undergoing the Charge.

† Dugdales
War. 126.b.

Since my first publishing of this Book, a learned and worthy Divine sent me a Book, written by a learned and ingenious person amongst other things concerning Synodals, whereby he expected I might receive some satisfaction concerning the Original and Growth of them; at whose Candle I should thankfully have lighted mine own, if it had given a clear light: But when I came to read the Book, I found the Author indeavoured to prove them one and the same with the Cathedral Duty, whose reasons to that purpose I can by no means subscribe to.

Cap. Quoniam
autem veru.
onera Ecclesi-
astica.

First, because Mr. *Lindwood*, a very learned Civilian and Canonist, reckoning up the *onera Ecclesiastica*, tells us, *Quædam enim sunt quæ dicuntur Episcopalia, & inter hæc continentur Synodalicum, Cathedraicum, &c.* so that it appears he conceived them two several and distinct charges.

Causa 10. q. 3.
Quid vero &
placuit ut nul-
lus & Concil.
Braca cap. 2.

Secondly, the *Cathedraicum* is by the Canons restrained not to exceed two shillings, and whereas anciently the Bishops had a third part of the Offerings, and in consideration thereof were to repair the Churches; they had this payment in consideration of the third part of the Offerings, and were acquitted of the repair of the Churches. But I could never learn that the *Cathedraicum* was ever paid in *England*: and the reason may be, because the Churches in *England* have always been repaired by the Parishioners by custom. Now the *Cathedraicum* being limited to two shillings, and finding upon inquiry, that the Synodals are not confined to any certain sum, but for the most part more than two shillings: it is very improbable that they are one and the same.

Thirdly, the *Cathedraicum* is annexed to the Bishops Chair, and in recompence of a duty not transferred to any other, but for ought I could ever learn, the Synodals have been always paid to the Arch-Deacons: and therefore for these reasons I take them for several and distinct Duties, as *Lindwood* seems to take them.

The same Author gives an account of some difference that has been moved between the Arch-Deacons and the Clergy, whether Procurations are due to the Arch-Deacons when the
Bishop

Bishop visits: in which case the same Author has given his Verdict clearly for the Arch-Deacons, and grounded his Opinion upon Reason, Custom and Authority.

First, his chief and only reason is, because the Arch-Deacon pays his Tenths as well for that year the Bishop visits, as for the other two; and therefore he concludes it very reasonable he should have that for which he pays Tenths:

But I conceive there is a great mistake in this Argument, for I am not satisfied the Arch-Deacons pay any Tenths for their Procurations, but for the Corps annex to their Arch-Deaconries and their Jurisdiction; for it were against reason to charge them to pay Tenths for that they eat and drink in their Visitations, and the Tenths ought to be of the clear profit; but where the Procurations are paid in money it should seem Tenths are due.

But admitting upon the valuation in the 16 H. 8. the procurations were valued (for in that of 20 E. 1. they could not be valued, not being then reduced into Money, nor of long after) then the Argument runs no farther, than that, because the Arch-Deacon pays a tenth part against reason, therefore the Clergy must pay the whole.

Vide extra.
com. de deci-
mis 296.

But the reason against the Arch-Deacons in my judgment is much stronger. I shall not take upon me to examine whether their Jurisdiction be ordinary or delegated; I will admit Custom has made it in some measure ordinary, though much might be said against it, I will let that point pass unquestioned, but from the beginning it was not so. But let that be as it will, it is clear there was no Jurisdiction annex to

to Arch-Deaconries originally, the first step was over the Deacons, as shall be shewed hereafter: It is without all doubt, that Originally all Jurisdiction over the Clergy was in the Bishops, and they in their own persons visited the Churches within their Diocesses, for the first 600 Years after Christ.

4 Concil. To-
letan. cap. 35.
2 Concil. Bra-
ca. cap. 1.

But in the Fourth Council of *Toledo*, which was held about the 630th year after Christs Birth under *Honorius*. 1. It was decreed, *Episcopum per cunctos Dioceses Parochiasque suas per singulos annos ire oportet*; what to do? not only to eat and drink, but *ut exquirat quo unaquaque basilica in reparatione sui indigeat*. But *si ipse aut languore aut aliis occupationibus implicatus id explere nequiverit, presbyteros probabiles aut Diaconos mittat, qui & reditus Basilicarum & reparationes & Ministrantium vitam inquirant*.

This is the first Commission that I can find for Bishops to make Substitutes to inquire, but the Jurisdiction still reserved to the Bishop to admonish, examine and punish; but here is no news of Arch-Deacons as yet in power.

Distinct. 25.
per lectis.

The first news I hear of any thing tending to any *Jurisdictionem* was over the Deacons, for *Gratian* tells us, *Archidiaconus, Subdiaconis & Levitis ad quem ista pertinet Ministeria. Et ad ipsum nunciat Episcopum excessus Diaconorum*: So that it seems the petit Jurisdiction the Arch-Deacons begun with, was to inspect the behaviour of their Brother Deacons, and to give the Bishop an account of their miscarriages in the nature of a Monitor only.

The next news I hear of them is a complaint against them, *Quod in plerisque locis ipsi super Presbyteros quandam exerceant dominationem* : but staid not there, but *ab eis censum exigunt* ; (which the Bishops could not do) whereupon it is commanded, *quod sint contenti regularibus disciplinis, & teneant propriam mensuram quam ab Episcopis eis injungitur* ; *hanc per parrochias suas exercere studeant, nihil per cupiditatem & avaritiam præsumentes*. Here it appears that they had gained some imployment under the Bishop over some certain Parishes, but with a limited Jurisdiction ; they must keep their measures, must not exceed their bounds.

By this it appears that the Arch-Deacons are meerly Substitutes to the Bishop, and what authority they have is derived from him, his chief Office being to visit and inquire, & *Episcopo nuntiare* ; and therefore the Bishop takes what causes he pleases to his own cognizance, and leaves some petit business to the determination of the Arch-Deacon. This being granted, which cannot be justly denied, it is against all the reason in the world, that the Bishop by easing of himself by appointing a deputy Vicar or Vicegerent should double the charge upon his Clergy.

As for the Custom alledged for this duty, before I give an Answer to it, it will be necessary to examine how the Canon Law stands in the point.

And by our own Provincial Canons I find it is especially provided, that the Arch-Deacons should receive no Procurations, *nisi illo die quo*

Distinct. 94.
dictum est.

Hob. 16.

Ergo dicuntur
oculi Episcopi.

Cap. ut singula
Ecclesiastica.

quo personaliter visitant Ecclesiam procurantem; and it goes further, nec redemptionem pro visitatione præsumant. What can be more clear? and what can this redemption mean, but Procurations in Money as is now used?

Verbo visitatione.

And the Gloss, to make still more clear, tells you, *forsan quia Episcopus eodem Anno visitavit & suspendebat Jurisdictionem Archidiaconi, & sic Archidiaconus vult ab eis aliquid loco procurationis exigere quod non licet, ut hic, ubi non visitavit.*

Cap. Quamvis lex naturæ.

And by another Canon made by John Stratford Archbishop of Canterbury and his Clergy, about the year 1345, it is forbidden. *Ne quis procuracionem ratione visitationis solvendam ab aliqua præsumat recipere Ecclesia, nisi visitationis officium diligenter eidem impenderit, scrutatis personaliter & inspectis per ipsum cum effectu quæ fuerint indaganda. Vide 4. Concil. Later. sub Innocent 3. ca. 33.* to the same purpose.

Ibidem verb. Ratione visitationis.

By this Canon likewise there is no Procurations to be paid without personal Visitation, but for the better understanding of this Canon I must observe to the Reader that there is two other sorts of Procurations, the one by Pact or Covenant, the other by Custom, that are no ways related to Visitations, and therefore the Canon well distinguishes, *ratione visitationis.*

And after that Canon has taken care for moderating the excessive charge of the Visitors in their Visitations, it leaves it to the choice of the visited. *An in pecunia quantitates solita, vel in victualibus visitantes eosdem voluerint procurare, optionem reservamus.*

And

And Mr. *Lindwood* tells us, in those days it was a common use in *England*, that the Arch-Deacon received in Mony, *nomine procurationis* seven shillings and six pence, that is, Eighteen pence for himself and his Horse, and Six shillings for his six Attendants and their Horses. Verb. Solet solvi.

There is by the same Canon provision made, that where there is a Church and a Chappel depending of it which is not presentable, but within the charge and cure of the Parson, that in that case there shall be but one Procuration for both, and that he that shall take more, shall *ipso facto* be suspended *ab officio & beneficio*, till he has paid double the sum received to the Cathedral Church of that Diocess.

Lastly, this Canon concludes with the Duty of the Arch-deacon and other Ordinaries in their Visitations, that *tam in Ecclesiis quam ornamentis eorum, cœmeteriorum clausuris & mansorum domibus reperientes defectus, iis sub pecuniariis pœnis præcipiunt reparare, &c.*

So it appears by these Canons, that there are no Procurations due to the Arch-Deacons, unless they visit *personaliter*; and if it be demanded, why in person; and why *Ecclesiasticim*? the close of this Canon tells you.

Now you shall hear what *Othobon*, the Popes Legate, in a National Synod held in *St. Pauls, London*, in *May 1268.* says to this matter, *Cum autem* (says he) *ratione visitationis procuratio debeatur, si quid exequatur vel recipiatur huiusmodi ratione cessante, jam male recepti & indebiti nomen subiit. Cum igitur intellexerimus quod plerique prelati procuraciones à subditis exigunt,* See Causa 10. q. 1. Relata to the same purpose.

* Nota.

*exigunt, licet visitationis Officium non impendant; nos tam Ecclesiarum indemnitati quam * pralatorum saluti consultius providentes, districtius inhibemus, ne quis eorum procuracionem, quæ ratione visitationis debetur, ab Ecclesia quâcunque recipiat, nisi cum eidem visitationis officium impendit; qui vero receperit, donec restituerit, ab ingressu Ecclesiæ sit suspensus.*

Concil. Later.

4. sub Innocent.

3. Can. 33.

accords.

Gregories Decretals

cap. ad

nost. am audien-

tiam de consuetudine causa

10. q. 1. —

relata.

So that it appears by these Canons, the Arch-Deacon, when the Bishop visits, ought not to have Procurations, but is expressly forbid to exact them. Now how far a Custom shall prevail against a Canon (I mean such Custom as the Ecclesiastical Courts allow of forty years continuance) belongs to the determination of the Canonists. And the Author tells us, *page 25* from them, that that Custom is said to be *rationabilis*, and by consequence *inviolabilis*, that is binding, *Quæ nec divino juri contradicit nec obviat Canonicis institutis.*

I could say much more to this purpose, but it belongs to the Canonists, to whom I leave it.

But if the Author intend such Custom as is allowable at Common Law, when he says Canons cannot be of such force as to annihilate and overthrow National Laws and Customs, I must grant he is therein very right.

But in this Case there can be no such Custom; for every Custom allowable at the Common Law must have its commencement before the first year of R. 1. which was, *Anno Dom. 1189.* but the Decree of Pope *Benedict XII.* which first gave way to commuting Procurations into *Mony Volentibus*, was about the year

Vas electionis

Extravagan.

li. 5. de censu-

bus, &c.

year 1337. and Mony payments in lieu thereof were not settled here in *England* of long time after; and therefore they cannot be claimed by any Custom or Prescription at Common Law.

For the Case of *Proxies* in *Ireland*, which he vouches forth of Sir *John Davies* Irish Reports, I conceive makes nothing at all to this question; for it is not at all moved in that Case, whether there were a double *proxie* due, the one to the Bishop when he visits, and another to the Arch-Deacon that sits still: But I presume the Author makes use of that Case to prove, that Procurations may be due *ratione visitationis*, when there is no Visitation; And I will agree they may by Act of Parliament; and in that Case, there is two Acts of Parliament for them.

But Sir *William Caples* Case, vouched in Co. 4. *Lutterels* Case, may be conceived to make something to this purpose, where the Case shortly is, That one held his Land *inter alia* by the Rent of Five shillings *pro wardo castri*, and upon avowry for this Rent, the Tenant pleaded that the Castle was down, and therefore no Rent due, and upon demurrer adjudged against the Tenant: and very great reason, for the Rent was reserved in respect of the Land, and not in respect of the Castle, for the reservation of the Rent is *Reddendum inde*, that is, for the Land Five shillings *annuatim pro wardo castri*; and the saying the Castle is down does not answer the *debet*, but if the Land for which the Duty arises be evicted by a more ancient Title, the Rent is gone: so that this Case being rightly understood makes against the

Decret. Greg.
li. 2. cap. 16.
cum ex officii.

the Arch-Deacons rather than for them; for in their Case the annual payment is paid for Procurations. Procurations are due, *ratione visitationis*; then when the Bishop that has the ancient right to visit, inhibits his Deputy, and does the work himself, to whom does the wages belong?

And note, that by the Canon Law no man may prescribe to be free from Procurations *ratione visitationis*.

Here I could willingly end my discourse, for I doubt I have said enough to displease some: but no good man ought, nor I hope will take any offence at what has been said, or at what I am about to say; and therefore I shall add a word or two concerning the Arch-Deacons and their Visitations.

Concil. Tole-
can. 4. cap. 35.
& Braca ca. 7.

It appears by what has been said, that for the first Six hundred years after Christ, the Bishops in their own persons visited, *cunctas dioceses parochiasque suas singulos annos*, and they had seven Deacons in every City, that is, Diocess to assist them. After that they had Authority in case of sickness, or other publick concerns, to delegate Priests or Deacons to assist them: and thereupon, as should seem, they cantonized their great Diocesses into Arch-Deaconries, and gave them Commissions to visit and inquire, and to give them an account of all at the end of their Visitations, as is before related; and the Bishops reserved the third year to themselves to visit their Churches, and thereby to inform themselves how the Arch-Deacons, their substitutes, performed their duties, how they domineered over the Clergy, and were reduced to their true measures. You have heard after upon complaint of the oppression,

Dist. 94.
dictum est.

sion, they and others used in their Visitations by their excessive numbers of Attendants, in one of the Councils of *Lateran* the number of their Attendants were limited, and by Canons of our own several restrictions have been made against the exorbitances of Visitors.

Cum Apostolus.
Sub Alex. 3.
1179. ca. 4.

By one Canon in the time of Archbishop *Langton*, they are commanded that in their Visitations their Attendants shall not exceed the number limited in the general Council of *Lateran* (whereby an Archbishop in his Visitation is allowed forty or fifty Men and Horses, a Bishop twenty or thirty, Arch-Deacons five or seven, an Arch-Priest two.) And further restrained the Visitors, that they should invite no body to their Visitation entertainments.

Utinam
Ut singula Ec-
clesia sua.

Cap. cum Apo-
stolus.

3 Council of
Lat. 1176. sub
Alex. 3. cap. 4.

But this did not do the work intended in easing the Clergy; therefore after in the time of *Stratford* Archbishop by the Canon before remembered it is further provided, that if any *plures visitare voluerit Ecclesias una die, procuratione unica in victualibus vel pecunia, ad quam omnes & singulas sic die unico visitatas proportionabiliter faciat contribuere, prout tradunt Canones, sit contentus. Et si nocte præcedente visitationem in quavis Ecclesia faciendam ad sumptus Rectoris seu Vicarii visitandi, seu die visitationis in prandio steteris, cum eisdem veram æstimationem sumptuum hujusmodi in procuratione, si eam in pecunia visitans licite duxerit exigendam, computare, seu allocare, vel pro ea in toto studeat compensare. Ita quod nec ultra sumptus hujusmodi solidam procurationem in pecunia, nec amplius quam deductis eisdem sumptibus de procuratione*

Quamvis lex
naturæ.

in pecunia exsolvenda supererit, præsumat recipere vel exigere quovismodo. Si quis autem aliter fecerit, donec indebite recepta restituerit, ab ingressu Ecclesie noverit se suspensum.

Naturalis dispositionis.

eg.
91

And likewise by the before mentioned Decree of Othobon it is ordered, that Bishops and other inferior Officers in their Visitations, in *superflua comitiva seu evictionum numero, vel alias in expensis gravare subditos non præsumant ultra quantitatem & numerum determinatum in constitutione Innocentii Papæ quarti, ne, &c.*

Vas Electionis
ubi supra.
Extravag. l. 5.
de censibus.

But Pope *Benedict* the XII. good Man, made an Edict or Constitution Decretal, whereby he settled what every Clergy-man, &c. should pay by way of Commutation in lieu of their Procurations, and this was about the year 1337. But the good Pope left in the Election of the visited, whether they would pay their Procurations in Money or Victuals: but it was long after, as should seem, before this Decree was generally received in *England*; (which makes me believe the Arch-Deacons were more moderate here than elsewhere.) For when *Lindwood* published his Provincial Canons, which was about the year 1423, it was not generally received in *England*, which was almost a hundred years after. But the certain time that Procurations here in *England* were turned into Rent I cannot find out: But the effect of this innovation was, that when Procurations were reduced to an annual Rent, the Visitations were degenerated into an *Audit* of receipts, and called a Visitation where the Parson draws up a thing called a Presentment containing (*omnia bene*) which by the Church-wardens is delivered

delivered to the Visitor or his Deputy, and Procurations paid, and the Visitation is ended; when for the most part nothing is well, or as it should be: The Churches kept like Swine-styes (I beg pardon for the comparison, I wish it were not too true) the Floors broken up, the Windows broken down, the Church and building belonging to the Parsonage and Vicarage Houses dilapidated, the Parson Non-resident, Pews in the Church built so high and disorderly that the behaviour of the People therein cannot be observed, Books and Ornaments of the Church wanting or imbezeled; and it is not likely the Parson and Church-wardens should present these things, when themselves are commonly most in fault; and besides the Churches, the Church-yards how are they used, their Fences neglected, Swine rooting in them, Muck-heaps thrown in them, and prophane gaming and other debaucheries used in them, shame to see or hear of?

There was complaint in the Council of To-
ledo, Quod quidam Episcopi negligebant suas Causa 10. q. 1.
Relata est.
parochias visitare singulis annis ad prædican-
dum & ad confirmandos pueros, procuraciones
tamen exigebant, ac si Ecclesias visitarent:
quod ex avaritia & negligentia procedat.
 There it was decreed in that Council, *ut hoc*
de cætero non faciant Episcopi, sed solícite &
diligenter greges visitent, cupiditatem vitantes,
& negligentiam dimittentes.

Certainly if there was cause of such complaint in those days, there is much more now.

I do not speak this, as though it were now a Duty incumbent upon the Reverend Bishops to visit in person *Ecclesiastim*; their age and

By the Canons
of King James
they are to vi-
sit every year.
Can 86.

Othobon. cap.
Naturalis dis-
positionis.

See Seldens hist.
of Tythes 219,
222, & 224.

4 Concil. Tolet.
c. 37.

great employments, and the Canon gives them leave to do it by their Substitutes the Arch-Deacons: but if their Lordships would be pleased to enjoin their Arch-Deacons to visit every third year *Ecclesiasticum*, when their Lordships hold their triennial Visitations, and give their Lordships a personal account how they found all things, it would work a great reformation in the miscarriages before-mentioned; and the Arch-Deacons would certainly be ready to obey such a command, *Ne magis videantur lucris pecuniariis inhiare, quam Ecclesiarum velle conservare statum, & salutem animarum quærere*; and then it were reason they should have their Procurations that year also.

The same worthy Author that has brought me into this discourse, tells us of another charge by the name of *Pentecostals*, or *Whitsunday Farthings*; these are but a Charge upon some particular Churches, where by Custom they have been paid, and seem to be of the nature of offerings: But I have never met with any thing more of them, than what I have received from that learned Author.

Lastly, I will conclude with an accidental, but a grateful charge, which is, That if the Founder or Benefactor to a Church, or their Posterity, becomes necessitous, they are from the same Church to receive relief. *Si enim omnibus aliis* (says the Canon) *necessitatem sustentibus pro solo religionis intuitu in usum res Ecclesiæ largiuntur, quanto magis consulendum est, quibus retributio debetur?*

All these charges and more the secular Clergy undergoes, which takes away a considerable part of their Revenues.

CHAP. XVI.

The Sixteenth Chapter shews, how far Prescription will prevail in the manner of Tithing, and in what Cases the Parson, Vicar, &c. shall be bound by a Modus decimandi.

THE Canonists, and those that are of opinion that Tythes are due *jure divino*, decry all Customs and Prescriptions that either diminish the Tenth part, or acquit the whole; for in truth, no Custom or Prescription, can be good which is positively against the Law of God.

The force of a Modus decimandi in Tithing. Lindwood cap. Quoniam propter verbo redemptionem.

And that is the reason why it is frequently said in our Law-Books, that the Ecclesiastical Courts will not allow a *Modus decimandi*.

Co. select Cases. 46. Dyer 79. p. 49.

But the Common Lawyers allow Tythes to be due *jure Divino secundum quid*, that is, *quoad sustentationem cleri*, but not *quoad decimam aut aliquam aliam certam partem*; and therefore they allow of a manner of Tithing which diminisheth the *Quantum*, or a Custom of not Tithing for this or that particular thing, so there be a sufficient maintenance for the Clergy besides: and of the same opinion are some of the most eminent School Men. And in this, as in all other things where the Common Law, and Canon, or Ecclesiastical Laws differ, the Common Law is to be preferred; for no Canons are of force in England, which are contrary or repugnant

Common Law and Canon differ concerning Customs, &c.

Tho. Aq. Sum. 2. 2. a. q. 87. art. 1.

St. 25 H. 8.

Cap. 19. Fine.

1 Inst. 344. a.

The difference
between Custom
and Prescription.

The Common
Law vindicated.

Lindwood c.
*Quoniam propter
verbum Redemptionem.*

8 E. 4. 13. b.
&c.

Seld. hist. Decim 408.

nant to the Laws, Statutes and Customs of this Realm, or to the damage or hurt of the Kings Prerogative Royal; but all other Canons Provincial still remain in force, and are confirmed by a Statute made in the 25th Year of H. 8.

The difference between Custom and Prescription I have shewed before in the Thirteenth Chapter.

But before I proceed upon this Subject, I must beg leave of the Reader to say something more in vindication of the Common Law, which in this point I conceive does not differ materially from the Ecclesiastical and Civil Law; for if I do not very much mistake the Canonists and Civilians, they do at this day allow of real compositions in discharge of Tithes, that is, where the Parson, Patron and Ordinary do by deed agree to accept of a certain Sum of Mony yearly, or so much Land or other profit in discharge of the Tithes growing and arising upon such Lands as they agree for. Now what is this but a *Modus decimandi*? and a Prescription to maintain this *Modus* is no more, than a supply to prove a real composition, which was made beyond all memory and lost; and it were against all justice and reason that if a man should be plundered of, or lose his Deeds, that he should thereby lose his Estate. And it must necessarily be intended, that every *Modus decimandi* that has continued time out of mind, must have a reasonable and legal commencement, and must be intended that it began by a real composition.

A Rent-charge cannot be created but by Deed, and yet it may be claimed by Prescription,

tion, supposing a Deed preceded : the like Law is of all Commons, &c.

Sir Thomas Ridley, a learned Civilian, in P. 181.

his view of the Civil and Ecclesiastical Laws, inveighs against Prohibitions, and the Common Law in case *de modo decimandi*; and endeavours to insinuate to the Reader, that the Spiritual Courts allow Prescriptions *de modo decimandi*, and that the Common Lawyers do the Spiritual Courts great wrong to affirm the contrary. But he himself in the next precedent Section tells the Reader, that a Prescription to pay less than a full tenth part, is both against the Canon Law, and against the Law of God it self. Now in every Prescription *de modo decimandi*, it is to be intended the rate Tythe was the full value of the Tythe at the time of the Original composition; for it cannot be presumed that the Bishop, Patron and Ordinary, would make a composition to the prejudice of the Church, and if the rate Tythe do not now reach the value, it is to be intended that either the Tythes are improved, or else that Mony is now become of less value, which makes the present inequality.

Lindwood cap. Quoniam propter verbo redemptionem. Consuetudo nec prescriptio juvat Laicos quoad decimam prescribendum vel retinendum. cap. Quoniam ut audivimus verb. consuetudine locorum quod laici minus solvant quam decimam, non potest consuetudine introduci, quia esset contra jus divinum.

Put the case then, that in the time of H. 1. (for the purpose) the Lord of the Mannor of Dale made a real composition with the Parson of D. that he and his Heirs for ever, then after would pay to the Parson and his Successors Five pound yearly, for the Tythes of his Demesns; and this Composition was confirmed by the Patron and Bishop as it ought, and Five pounds was the full value of the Tythes at that time. I think it will not be denied me but this was a good real Composition, and that

if afterwards the Tythes had become of less yearly value, the Lord of the Mannor had been bound by the composition to pay the Five pound *per Annum*; then suppose on the other hand, that the Lord of the Mannor after this composition being thereby encouraged, made great improvement of his Demesns, by which the Tythes are become of much greater yearly value, or that Mony by the discovery of the *West Indies* (as the truth is) be become of less value: Is there not then the same reason to bind the Parson, as to bind the Lord in the other case? which being granted, as in all Justice and reason it must: and the Lord having no other evidence to make good his bargain but his composition, and that in the late Wars was plundered, or his House, and that by accident burnt, mislaid or imbezeled; shall he therefore lose his Composition which he must now be forc'd to claim by Prescription (his Composition being lost) because the Tythes are of greater yearly value than Five pound, as the Civilians would have him, or shall he be admitted to maintain his right by the Common Law. I appeal to the judicious and indifferent Reader, which is more just? Now the Judges of the Common Law well knowing what the Judges of the Ecclesiastical Courts will do in this Case, and likewise that at this day there is no rate Tythe can come near the true value of the Tythe Wheat about the time these Compositions were made, not being perhaps above Twelve pence or Two shillings a Quarter, and now for the most part twenty times as much (not because Wheat is of greater value than it was, but because Mony is of less)

they

they do in this case frequently grant Prohibitions to try whether there be such a Custom or no: and if they find there is no such Custom, they send the cause back by Consultation to the Ecclesiastical Court to be there determined; but if they find there be such a Custom, they will not trust the Ecclesiastical Judge any more with it, but leave the party to take his remedy for the *Modus* in the Ecclesiastical Court. And for the very same reason Prohibitions are granted upon real compositions. And by the Ecclesiastical Law Tythes are due of Minerals, Turfs, fishing in the Sea, &c. which the Common Law denies; and therefore if Suits be in the Ecclesiastical Courts for any of these things which are due by the Spiritual, but not by the Common Law, the Judges of the Common Law do grant Prohibitions to stay their proceedings.

And *St. German* in the *Doctor and Student* Lib. 2. cap. 55. puts this Case, That if it were ordained for a Law, that all payment of Tythes from thenceforth should cease, and that every Curate should have a certain portion of Land assigned to him, or a Rent or Annuity which should be sufficient for his maintenance and those that served under him, or that every Householder should give a certain sum to that use, that this were a good Law, and grounded his opinion upon this saying of Doctor Gerson, a great Doctor in Divinity, *Solutio decimarum sacerdotibus est de Jure Divino quatenus inde sustentetur; sed quoad tam hanc vel illam assignare, aut alios in alios redditus commutare, positivi juris existet.* f. 167. a.

And

And this commuting Tythes into annual Salaries is frequently practised in the Protestant Churches beyond Sea, as I have been informed.

*Prescriptions
are confirmed
by Parliament.*

And these Prescriptions *de modo decimandi* are not only allowed by the ancient Common Laws of this Realm, but confirmed by Act of Parliament.

St. 2 E. 6. c. 13.

For by the Statute of 2 E. 6. it is enacted, that no person shall be sued or otherwise compelled to yield, give or pay any manner of Tythes, for any Mannors, Lands, Tenements, &c. which by the Laws and Statutes of this Realm, or by any Priviledge or Prescription are not chargeable with the payment of any such Tythes, or that be discharged by any composition real. And having said thus much in vindication of the Common Law, I shall proceed to shew what Prescriptions and Customs, de modo decimandi vel de non decimando are good and allowed at Common Law.

*Who may not
prescribe in non
decimando.
Seld. hist. Decim.
409.
Rolls 1.653.*

First, no Lay-man can prescribe in *non decimando*, that is, to be discharged absolutely of the payment of Tythes, and to pay nothing in lieu thereof unless he begin his Prescription, in a Religious or Ecclesiastical Person, and derive a Title to it by Act of Parliament.

*Who may pre-
scribe in non
decimando.
Winch. 65.
Brownl. 1.31.
Co. 2. Evesque
Wincheters
Case.
Rolls 1.653.
H. 3.5.
Rolls 1.653.
H. 6.*

But all Spiritual and Religious Persons, as Bishops, Abbots, Priors, Deans, Prebends, Parsons, Vicars, &c. may prescribe in *non decimando*, and their Farmers may make use of such Prescriptions to free themselves from the payment of Tythes.

And hence it is, that the Parson or Vicar of one Parish, that hath part of his Glebe lying in another Parish, may prescribe in *non decimando* for it, that is, as hath been said, to be free from the

the payment of any manner of Tythe for it.

But Church-wardens who have Land be-
longing to their Churches cannot prescribe *in non decimando*, because they are neither Religious nor Spiritual persons.

Church-wardens not.

It hath been held that a Bishop may prescribe that he and his Tenants for Life, Years, and Will, and his Copyholders have been freed from the payment of Tythes; the reason alledged is, because it might commence by a real composition for the whole Mannor. And in all cases where a Spiritual Person prescribes *in non decimando* his Tenants and Farmers shall take the benefit thereof.

Rolls 1.653.

H.7.

A Clergy man may prescribe for himself and Tenants.

Rolls 1.653.

H.4.

C.2.45.2.

But if any of the Abbots, Priors, &c. that came to the Crown by the Statute of 27 H. 8. were discharged of the payment of Tythes by Prescription *de non decimando*, yet the Patentees of these Lands shall not have the benefit of such Prescriptions, but shall pay Tythes.

St. 27 H. 8. c. 28.

Rolls 1.654.

J. 1. contra.

Hob. 309.

Neither can the Kings Patentee be freed from the payment of Tythes of those Lands which the King whilst he had them in his own hand prescribed to be freed from the payment of Tythes, because it is a Personal discharge in the King, for the question arising upon Lands disafforested, there might be several reasons why he paid no Tythes; first, because the grounds were depastured with Beasts *fera natura* for which no Tythes were due, or for that the King was not bound by the Decretal Epistle of Pope Innocent the Third, who settled the Parochial right of Tythes, or by reason the King being a mixt Person might prescribe *in non decimando*.

Rolls 1.655.1.2

Patentee del Roy.

Hetley 52.60.

Cro. Car. 94.

dubitatur.

Brownl. 1.31.

contra.

Cro. Car. 94.

Dubitatur,

Idco quare.

But

But the Kings Patentees of those Abby Lands that came to the Crown by the Statute of 31 H.8. may take advantage of a Prescription *de non decimando* in the Abbot, Prior, or other Religious Person by the force of that Statute, and the enjoyment of the lands since the dissolution freed from the payment of Tythes during memory, is a good proof *à posteriore*, that the Abbots, Priors, &c. held the same discharged from the payment of Tythes.

A Country may prescribe in non decimando.

Lib. Inr. tit. Prohibit.

Co. 2. 44. b.

Doct. & St. l. 2.

c. 55. f. 166,

167. b. 174. b.

Roll 1. 653.

H. 10, 11, 12,

13.

Who may prescribe de modo decimandi.

Co. 2. 44. a. b.

Cro. El. 599,

758, 784.

Cro. El. 784.

Noy 132.

Hob. 40. 41.

A Modus to pay two things, and one fails.

The Inhabitants of a County, Hundred or Country, as the Wilds of *Kent* and *Sussex* may prescribe not to pay Tythes of Wood, Milk, or any other particular thing, so there be a competent Livelyhood for the Clergy besides.

But every Lay-man may prescribe *de modo decimandi*, that is, that such a Man being Lord of such a Mannor, and all those whose Estate he hath in the said Mannor, have from the time whereof the memory of Man is not to the contrary, had and enjoyed to his and their own uses all the Tythes arising, &c. within the said Mannor, paying so much yearly to the Parson of D.

And a Lord of a Mannor may prescribe for himself, and his Copyholders, for they are part of the Demesns of the Mannor; or the Copyholder may prescribe in the name of his Lord.

If a *Modus decimandi* be to pay two things, as two shillings for a Park, and a shoulder of every Buck kill'd in the Park, and all the Dear die or are kill'd up, yet notwithstanding the Prescription holds good for the two Shillings.

But

But every Prescription and *Modus* must have a Continuance, for it cannot be good at one time, and asleep at another, neither can a wilful denial destroy a *Modus decimandi*: and it is taken for a Rule in Dr. *Leyfield* and *Tisdal's Case*, that where no Tythes are regularly and legally due, as for a House, &c. there can be no *Modus decimandi* alledged.

Hob. 43.:
Prescriptions
must not sleep.
Hob. 111.:
Modus for
Houses.

And yet it hath been held, that a Tythe by Prescription may be paid for a House, because it might be due for the Land before the House was built. *Ideo quære.*

Co. 11. 162.
Hob. 111.:
Quære.
Rolls 1.640.
b. 5.
Hob. 107.:
Rolls 1.651. d.
16, 17, 18, 19.
Cro. El. 446.
Co. Select Cases
45.:
More 454.

A *Modus* to pay Tythes without the view of the Parson is not good, because it conduces to fraud, and is now against an Act of Parliament.

So a *Modus* that because you have paid your Tythe of your Cows, you have been freed of the Tythes of Oxen, Steers, Heyfers, &c. is not good; that is, to pay your Tythes in kind of one thing, thereby to free another Tythe.

But where Tythe is only due by Custom, as for Fish taken in the Sea, there less than a tenth part may be good.

More 454.

And it hath been held a void Prescription to pay a Load of Hay yearly in discharge of all his Tithes Hay, that is, to pay a part in discharge of the whole.

Cumberland's
Case. per Rol.
P. 13 Jac. B. R.
What Prescri-
ptions de modo
decimandi.

So for a Parishioner to prescribe that he, &c. has time out of mind repaired the Church, and by reason thereof hath been discharged of the payment of Tythes, is no good Prescription, for the Parson not being bound to repair the Church has no recompence, but if it had been, that he had repaired the Chancel, and in consideration thereof had been

2 Leo. 70. are
good.
Rolls 1.549. 1.
d. 8. 9.

been freed of the payment of Tythes, that had been a good *modus, ratio patet*.

Wool and
Lamb.
Rolls 1.648.
c.r.649.d.7.

It hath been held a good Prescription, that the Parishioner hath time out of mind paid the Tythe Wool of all the Sheep he has shorn, though never so lately bought in, and in consideration thereof hath been freed of the payment of the Tythe of those he had sold before *Shearday*.

Rolls 1.648.
d.4.

It hath been held a good Prescription, to have paid the Tenth Fleece or Pound of Wool, so there were any allowance for the odd Fleeces or odd weight.

Rolls 1.649.
d.5.

It hath been adjudged a good *Modus*, that in consideration the Parishioner hath shorn and wound the Wool to be free of paying Tythes of the neckings and birlings without fraud.

Rolls 1.652.
g.1.

It is a good Prescription, that the Parishioner hath time out of mind paid a halfpeny for every Lamb sold before *May-day*, but if the Parishioner sell his Lambs fraudulently a few days before *May-day*, on purpose to defraud the Parson, &c. it is no good discharge.

Marsh. 79.

A Prescription to pay Wool in kind, if kept till Clipping-day, but if sold before, to pay a halfpeny a Fleece, as Mr. *Marsh* reports, was held no good Prescription, *tamen quare*.

For Corn.
More 474.

It hath been held a good *Modus*, that in consideration that the Parishioner hath mowed, reaped and shokt the Corn, and paid his Tythe in the shock, that he hath been freed of the payment of any Tythes of the Rakings, but as Sir *Edward Coke* says, there needs no *Modus* as to Rakings without fraud.

Littl Rep. 31.

To prescribe to have paid the Tenth sheaf Rolls 1.648.
or shock as it falls out, is no good Prescription ^{b.6.}
to free the Parishioner of any other Tythe, it
being no more than is due.

A *Modus* that in consideration, that the Rolls 1.648.
Parishioner hath sowed, reapt, bound and set ^{d.4.}
up the Corn one year to be free from the pay-
ment of herbage the next year of the same
Land, was held good, *tamen quare.*

But it is no good consideration, that in con- Rolls 1.650.
sideration the Parishioner has plowed, sowed, ^{d.11.}
mowed, cockt and set out the Tythes of part,
that therefore he should be freed of paying
Tythes of a small parcel left standing.

A man may prescribe to pay the Tenth Acre *Wood.*
or Rood of Wood standing, and the Parson, Rolls 1.648.
&c. cut it himself, as is used in some parts of ^{b.7.}
Lincolnshire.

It hath been held a good *Modus* to pay one *Calves and*
Calf at seven, and if under, a halfpeny a piece, *Milk.*
and if he sell any Calf to pay the tenth part Rolls 1.648.
of the price, and it hath been held a good ^{c.2.}
Modus to pay Tithe Cheese from *May-day* till
Michaelmas to be discharged of the whole Rolls 1.651.
Tythe of the Cows, and no Tythe is due for ^{d.19.}
Cheese but by Custom, and the labour of Cro. El. 609.
milking and making into Cheese is added, ^{786.}
whereas nothing but the Tithe of Milk is due
by Law.

But it is no good *Modus* to pay for every Rolls 1.651.
milch-Cow two pence, and for every Calf ^{d.17.}
one penny, in discharge of the Tythes of all
other Cattel, but it is a good *Modus* for the
Calves and Milk only; so a *Modus* to pay a
Tithe Calf in satisfaction of the Tithe of all Rolls 1.651.
manner of Cattel is not good. ^{d.18.}

A

Eggs.

Rolls 1.648.

c.3.

A *Modus* to pay thirty Eggs in *Lent* in satisfaction of all the Tithe of Eggs has been held a good *Modus*.

Land in lieu of Tythes.

Rolls 1.649.

d.16.

Cro.El.587.

8 E.4.14.2.

Headlands,

Balks, &c. and Hay.

Rolls 650.d.10.

Noy contra.15.

It is a good *Modus* that the Parson time out of mind hath had so much, or such a parcel of Meadow or Land in satisfaction and discharge of all the Tythes of Hay, & carising upon such Land.

It is no good *Modus* to be free from the payment of Tithe Hay arising upon Hades, Balks, Greenslips, or Doals eaten by Beasts of the Plow, in regard the Parishioner hath sow'd, mown, reapt, shockt and prepared the Corn, &c. but the contrary hath been held, *ideo quere*.

Haley 147.

But in consideration that the Parishioner hath made the Grass growing in such a Close, and then paid the Tithe of it, he hath been free of the payment of the Tythes of the Balks and Hades, has been held good.

Rolls 1.650. d.

13.

It is not a good *Modus* that the Parishioner having spent all his Hay upon the Beasts of the Plough, that therefore he should be free from payment of Tithe-Hay.

Rolls 650.d.

13.

But a *Modus* that in consideration the Parishioner hath cut, dried and shockt the Corn, he hath been freed from the payment of Tithe-Hay, has been held a good Prescription.

Noy 31.

A *Modus* that the Parishioner hath time out of mind got Rushes and strewed the Church, and in consideration thereof hath been discharged of the payment of Tithe-Hay, has been adjudged no good *Modus*; but if it had been to strew the Parsons Seat, or to deliver Straw to the Parson to strew the Church, had been a good *Modus*.

Cro.El.276.

But

But a *Modus* to pay to the Dean and Chapter, though Spiritual Persons and Lords of the Mannor, is not a good discharge against the Parson. Syderf. 258.

And it hath been held a good *Modus*, that in consideration the Parson hath made the Hay into Grass-cock, that therefore he hath been discharged of the Tithe of the Aftermath; but Sir Edward Coke declares for Law, that there needs no *Modus* to be alledged, but that Aftermath is of it self freed from the payment of Tythes, and so I take it the Law is held at this day. Rolls 1.647. b.1,2,3,4. 648.d.1,2. 649.d.3,4. Hetley 133. Hob.250. More 910. Cro.El.660. 2 Inst.652.

A *Modus* to pay the tenth part of all the honey and wax of Bees killed, has been held a good *Modus* for the Tithe of Bees. Bees. Rolls 1.652. d.15.

But there have been some opinions, that there is no Tithe due by the Law for Bees, because they are *feræ naturæ*. But nevertheless both by Custom and Canon they may be Tithable, and so they are in most places.

A Custom or Prescription to pay no Tythe for the Herbage of Beasts bred up for the Plow and Pail hath been allowed to be a good custom: but of this see more before in the fifth Chapter. Herbage. Bulstr.2.Price verf. Mascall. More 909.

It is no good *Modus* that the Owner of the Land has paid all his Tithe for his Cattel there depastured, therefore to be free of the Tithe Herbage for guest Horses. Guest Horses. Roll 1.650.d. 14.

It hath been held that no Tythes shall be paid for the fewel spent in the dwelling Houses in the same Parish it grew, without alledging any *Modus* at all. Fewel. More 909.

Cro. Car. 113.
Norton verf.
Farmer. T. 4
Car. 1.C.B.

But it should seem that in this last Case there needs no *modus* at all to be alledged, but that for the fewel spent in the Owners House in the same Parish, there is no Tythe due of Common right. *Ideo quære.*

Parks.
Rolls 1.651.e.
1, and 4.
Masfal verf.
Prie. P. 13 Jac.
B.R. Hob. 39.
Hutton 58.

If a man prescribe to pay six shillings and eight pence, for all the Tythes arising and happening in such a Park, and the Park is disparkt and turned to tillage, the Prescription is gone.

But if in this Case he had made his Prescription, that in consideration of six shillings and eight pence yearly paid to the Parson, &c. he had been freed of all the Tythes arising upon six hundred acres of Land called D. Park, this had been a good Prescription, and should have freed the Park.

Rolls 1.652.e.
5.
More 909.
Boothby verf.
Reynels.
M. 20 Ja. B.R.
M. 10 Jac. 10.
641. B.R.
Hutton 57.
Noy 146.
Owen 34.
Noy 148.
More 909.

So if the Prescription of a Park have been to pay six shillings and eight pence, and a Shoulder of every Buck killed in the Park, in discharge of all Tythes arising within the same, in this case, though the Park be disparked, and no Deer left, yet the *modus* remains, and shall discharge the whole Tythes.

And it has been held a good *modus* to give a Buck and a Doe yearly to the Rector, &c. in discharge of all the Tythes arising within the Park, although they be *feræ naturæ*: and it shall hold though the Park be disparked.

But if the *modus* have been only for the herbage of the Park, and if it be disparkt and sown with Corn the *modus* is gone.

*Modus for
Land.*
Hutton 58.

If a Parson, &c. have had an Acre or piece of Meadow ground, time out of mind, in discharge of all the Tithe-Hay arising upon such

a Farm, this shall only discharge the Hay upon the ancient Meadowing, and not the Hay of Ground converted from Pasture or Tillage to Meadowing.

But if one have a *modus* for all the demesne of his Mannor, and erect a new Mill, this shall be comprehended within the *modus* and shall not pay any Tythe. Rolls 1.651. e.1. 2 Inst. 490.

But if a Man have a *modus* for all the Hay and Grass upon twenty acres of Land, and converts the same to Tillage, or into a Hop-yard, he shall pay Tythes thereof: So it appears a great difference where the *modus* goes to all manner of Tythes in general, and where to particular Tythes. Rolls 1.651. E.2.

* Where a *modus* is alledged to pay a certain sum to the Vicar in discharge of any Tythes due to the Parson, this being a dispute of the right between two Clergy-men, ought to be determined in the Ecclesiastical Court, but it seems to be a good *modus* as to the Parishioner, and so it was held in the Case of *Pool* and *Reynels* in the Kings Bench. *Mich. 10 Jac.* But Mr. *Ware* reports a Case to be adjudged *H. 18 Jac. B.R.* that it was no good *modus*, and that *Henden* vouched one *Bankes* Case to be adjudged accordingly. *Ideo quære.* But it seems a good *modus*, for this being originally a *modus* between the Parson and Parishioner, the Vicar might be endowed with the *modus*; but this must be intended also where the endowment is time out of mind, and not to be produced, or where the Vicar hath it specially in his endowment. * Where a *modus* to the Vicar shall discharge against the Parson, and è converso. More 907. Cokes Select Cases 37. Cro.El. 137. Hutton 57. 10 Jac. 1.641. Modus to pay a rate to the Vicar for Tythes due to the Parson.

Yelverton 86.
contra Bulstr.
3.220.

Leonard. 1.94.

Croke El. 71.

Bulstr. 1.220.

Wintel vers.

Child,

M. 14 Jac. B. R.

A payment to the Parson by Custom may be good against the Vicar.

But to pay a rate to the Parish Clerk is no good discharge of Tithes against the Parson or Vicar, unless the Parson be bound by Custom to find the Parish Clerk, nor is a *Modus* to the Parson a good discharge against the Vicar.

And so having shewed what Prescriptions *de modo decimandi*, and *de non decimando*, are good and allowable at the Common Law, in the next place I shall shew how a *modus decimandi* or Prescription may be destroyed or lost.

CHAP. XVII.

The Seventeenth Chapter shews how a Modus decimandi or Prescription may be lost or destroyed.

IF a Man have a *Modus* for a Mill, which is removed of necessity to a new place, because the water *invito* has changed its course, here though the Mill be removed, the *Modus* remains. Rolls 1.652. f.1,2. What matter will destroy a Modus.

But if the Owner of such a Mill shall of his own accord, and without any cause of necessity remove his Mill to a new place, in this case he shall lose his *Modus*.

If a Man have a *Modus decimandi* for two Messuages and two Mills to pay twenty shillings *per annum*, and he erects a new Mill in one of the Messuages, the *Modus* shall not extend to free the new Mill. Rolls 1.652. f.2.

There have been Opinions that Unity of Possession, that is, to have Fee-simple in the Rectory, and likewise in the Land to which the *Modus* is annexed, should destroy a Prescription or *Modus decimandi*. Stepney verf. Warren. P.41 El.B.R.

But if a Man have four Water Corn-Mills, for which he hath time out of mind paid a *Modus* of four shillings *per annum*, and pulls down one of them, yet the *Modus* remains, and he shall still pay the four shillings. Sir John Hollis Case. T.9 Jac. B.R.

CHAP. XVIII,

The Eighteenth Chapter shews, by what Conveyances, and by what names Tythes may be granted, conveyed, demised, &c. and what Demises Parsons and Vicars may make of their Glebe and Tythes.

Stiles 261.
By what con-
veyances Tythes
will pass.
Hungerford
vers. Hawland.
T. 36 El. ro. 569
per Owen.
Cro. El. 814.

Brettyman
vers. Wood-
ward. P. 31 El.
ro. 17. b. R. B.
Noy 89.
Cro. Jac. 137.
Hetley 3.
Hughes 233.
Bellamy vers.
Bapthorp. M.
2 Car. ro. 179.
B. R.
Co. 4. 35. 2.
*Yelver. 94. 95.
Latch. 176.
Noy 81. 121.
Yelver. 94. 95.
Brown. 2. 11.
Ideo quare.

Regularly Tythes at this day cannot be granted or demised but by Deed in Writing under Hand and Seal, or by matter of a higher nature, as Fines, Recoveries, &c. But in such cases as they are become Lay-fee they may be devised by Will in writing as Lands may, but they cannot be granted by Copy of Court-Roll, because they cannot be parcel of a Mannor.

But Tythes cannot be conveyed or demised by any parol agreement, unless it be to the Owner of the Land for one year by way of retainer: * and some opinions have been, that is, it is good for more years. *Ideo quare.*

Tythes impropriate are at this day by the several Statutes of dissolution become Lay-fee; and will pass by the name of Hereditaments, but by the grant of a portion of Tythes, the Tythes belonging to a Rectory will not pass.

There has been some Opinions that a man may without Deed sell his Tythes to the Landholder for more years than one, but not lease them without Deed.

Tythes

Tythes impropriate may be past from one to another by Deeds of Bargain and Sale, inrolled according to the Statute of 27 H. 8. Stat. 32 H. 8. they may be transferred in use upon good consideration by Deeds of Covenant to stand seised, or by Fines or common Recoveries, and may be sued for by Writs of Assise of Navel disseisin, Writs of Entry, Writs of Right, or other real Actions, or by *Ejectione firmae*. cap. 7.

But upon a Lease for Lives of Tythes, no Rent can be reserved to be recovered at or by the Common Law, for no Action of Debt will lie, or distress can be taken, *& ubi non est remedium, ibi non est jus*.

But upon a demise of Tythes for years a Rent may be reserved, because an Action of Debt will lye upon such Lease upon the Contract.

CHAP. XIX.

The Nineteenth Chapter shews, what barren Lands are free from the payment of Tythes within the Statute of 2 E. 6. cap. 13.

2 Ed. 6. ca. 13.

IN the Statute of 2 E. 6. there is a Proviso to this effect:

That all such barren Heath or waste Ground, other than such as be discharged from the payment of Tythes by Act of Parliament, which before this time have lain barren and paid no Tythes by reason of the same barrenness, and now be, or hereafter shall be improved and converted into arable ground or meadow, shall from henceforth after the end and term of seven years next after such improvement fully ended and determined, pay Tishe of Corn and Hay growing upon the same, any thing in this Act to the contrary in any wise notwithstanding.

This Clause was added for the encouragement of Tillage and Improvement of lands by water or otherwise; and therefore though here be no words of discharge of the payment of Tythes, during the first seven years, yet by a reasonable intendment, the same shall be discharged from the payment of Corn and Hay, for the first seven years after the Improvement; and that is proved by the subsequent Clause, whereby it is provided;

That if any such barren waste or Heath-ground hath before this time been charged with
the

2 Inst. 656.
Dyer 170. b.
P. 5.

Plow. 204. 2.
396. b.

the payment of any Tythes, and that the same be hereafter improved and converted into Arable or Meadow, that then the owner or owners thereof shall during the seven years next following from and after the same Improvement, pay such kind of Tythes as was paid for the same before the said Improvement, any thing in this Act, &c.

So that it appears plainly by this *Proviso*, that it was the intent of the makers of this Law only to free these improved Lands from the payment of such Tythes as were produced by the improvement, which must be Hay or Corn, and no other.

Next, suppose a Man have barren Lands within this Law which are free from the payment of Tythes by Prescription, real Composition, &c. It should seem by the penning of the aforesaid *Proviso*, that he should pay Tythes for the same after the seven years, this *Proviso* only providing for such Lands as are freed by Act of Parliament.

But that doubt seems cleared by the next precedent *Proviso* in this very Act, whereby it is provided.

That no Person shall be sued or otherwise compelled to yield, give or pay any manner of Tythes for any Mannors, Lands, Tenements or Hereditaments, which by the Laws and Statutes of this Realm, or by any Priviledge or Prescription, are not chargeable with the payment of any such Tythes, or that be discharged by any Composition real.

So that this *Proviso* preserves all former legal discharges.

But

But the great question upon this Law is, what shall be said to be barren Heath or waste Ground within this Law, and Sir Edward Coke defines barren Land in these words.

2 Inst. 655.
656.

Terra sterilis est terra infœcunda nullum ferens fructum. But that definition will not hold in this Case, for it does appear by the second *Proviso*, that such barren Lands are intended that are barren *quoad Agriculturam*, that is, such barren Heath or waste ground that of its own nature, without improvement by Lime, Marle, Manure, &c. will not bring forth Corn or Hay.

Dyer 170. p. 5.
Co. Ent. 462,
463.

6 E. 6. per
Bendloes.
2 Inst. 656.
Hill. 9 Jac. C. B.
ex motione
Houghton.

But if Ground be not fit for Tillage, yet if it be not *suapte natura* barren, it is not within this Law. As if a Wood be stubbed and grub'd up, and made fit for the Plough, and reduced to Tillage, it shall pay Tythes presently; for Wood-ground is *Terra fertilis & fœcunda*.

2 Inst. 656.
More 909.

So if Marish, Meadow or other Land by neglecting to scower the Trenches or Sewers, or by sudden inundation be drowned; or if by ill husbandry or negligence fertil Land be overrun with gorse, whins, broom, fern, bushes, briars, &c. yet they shall not have the benefit of this *Proviso*, because of their own natures, they are fertile and apt for Tillage; and the Parson, Vicar, &c. shall not lose his Tythe by the ill husbandry of the Parishioner.

Co. 10. 86. b.
Co. 6. 18. a.

If Lands were barren Heath or waste Ground, at the time of the making of this Act, and were improved, and had or might have had the benefit of this Law, and after return to their barrenness, the Owner of such Lands shall not have the benefit of this Law a second time upon

upon a second improvement: but I take the Law to be otherwise, if the Lands had been improved before the time of the making of this Law, and were then become barren again, for there I take it, upon a new improvement the owner of such Lands shall have the benefit of this Law.

Marsh Lands new gained from the Seas, More 430.
and Fen Lands gained from the fresh waters 3. Buft. 165.
by draining, banking, &c. are not within the 2 Inst. 656.
meaning of this Law to be freed from the payment of Tythes, during the first seven years after the gaining.

But the Determination of this point, which is or which is not barren Land within this Statute, commonly falls out to be determined by common Jurors, which notwithstanding the Direction of the Judge are seldom so favourable to the Church as they ought.

This *Proviso* only charges the payment of Corn and Hay after the seven years, and the second *Proviso* provides only for the payment of such like Tythes as were formerly paid before the Improvement, for the first seven years after the improvement, and makes no provision for the payment of other Tythes, save Corn and Hay, after the seven years: So that it may seem to imply a discharge of all Tythes, but Corn and Hay after the seven years: But to this I answer, that there being several Laws both Statute and Canon made formerly for the due payment of Tythes, and no negative words in this Act, it shall not abrogate those Laws to the prejudice of the Church by implication.

27 H. 8. c. 20.
32 H. 8. c. 7.
confirmed by the
Stat. of 2 E. 6.
Canons Provincial. Cap.
Quia quid maledictionis. Cap.
Erroris damnable. Cap. Quoniam propter.
Cap. Quoniam ut audivimus,
&c.

CHAP. XX.

The Twentieth Chapter shews, what a real Composition is, and in what Cases Lands shall be freed of the payment of Tythes by such Composition real.

Where Tythes shall be discharged by a real Composition, and what it is.

Co. 4. 44. 2.
2 Inst. 655.
Doct. & Stud.
1. 2. cap. 55.
fult.

Vide Lindw.
cap. *Quoniam*
propter verbo
Redemptionem,
Upon this
matter.

THAT which we call a real Composition is, where the present Incumbent of any Church, together with his Patron and Ordinary do agree by Deed under their Hands and Seals, or by fine in the Kings Court, that such Lands shall be freed and discharged of the payment of all manner of Tythes for ever, paying some annual payment, or doing some other thing to the ease, profit or advantage of the Parson or Vicar, &c. to whom the Tythes did belong: And these real Compositions have ever been held and allowed here in *England* to be a good Discharge of the payment of Tithes: And from these real Compositions it is intended, all Prescriptions *de modo decimandi* first took their rise and beginning, though I doubt most at this day have grown up from the negligence and carelessness of the Clergy themselves.

And such Compositions may be made by the Parishioner alone without the Patron and Ordinary, but it then binds only for the life of the Incumbent, and will be avoided by his Resignation, Deprivation, or being absent eighty days in a year, from his Cure, if he have Cure of Souls.

But

But it seems some of the Canonists and Civilians are of Opinion, that all Compositions between the Lay and Clergy to be discharged wholly of payment of Tythes, or to pay less in recompence than the full value, are invalid, but otherwise between Clergy-men; but by the Common Law, which must govern here, there is no such difference allowed, but all real Compositions made as aforesaid, are good and valid.

But note, that no Composition made by Hob. 176. parol or word of mouth only, and not reduced into writing under Hand and Seal, is binding at all, unless it be upon Record as by Fine, &c.

But I conceive at this day no real Composition can be made to bind the Successor of the Parson or Vicar that makes the same, for they are now restrained by the Statute of 13 Eliz. *to make any Grants other than for twenty one years, or for three lives, with the other qualifications mentioned in the said Act.* 13 El. cap. 10.

So that it seems clear to me, that Parsons and Vicars at this day, notwithstanding the confirmation of the Patron and Ordinary, cannot charge their Benefices or any thing belonging to them, other than for twenty one years or three lives as aforesaid, and that only by Leases confirmed by Patron and Ordinary of things usually demised; whereupon the accustomed yearly Rent or more is reserved.

So that what has been said concerning real Compositions is only to be intended of such as were made before that and other later Statutes, for I take it a real Composition at this

this day will only bind the Parson himself, whilst he is Parson Resident, and serving the Cure, *quod nota.*

More 915.

And it hath been held, that if there be two Proprietors or Farmers of Tythes, that an agreement with the one shall bind his Companion.

Lindwood cap.

Quoniam propter verbo Redemptionem.

Greg, Decretals

l. 1. 445. c. 2.

Statuimus.

The Canon Law allows a Composition with Lay-men for Tythes received, but not for Tythes to come.

See a Decretal of *Alexander* the Third, whereby the Pope confirms Compositions betwixt Clergy-men.

CHAP. XXI.

*The One and Twentieth Chapter
shews, what Monastery Lands are,
or may be free from the Payment of
Tythes.*

IT is without Dispute, that none of the Abby and Priory Lands, that came to the Crown by the Statute of 27 H. 8. or before, are freed or discharged of the payment of Tythes by the Statute of 31 H. 8. c. 8. or by any other Law or Act of Parliament.

Jones 317.
188. Stat.
27 H. 8. c. 28.
What Monastery Lands shall be freed from payment of Tythes.

But in the Statute of 27 H. 8. there was a *Proviso*, that notwithstanding that Act the King might by his Letters Patents under the great Seal of England continue any of the said Monasteries, and that *Proviso* is left out of all the modern Prints, only *Rastal* in his abridging of that Statute makes some mention of it.

Now the Reader must observe once for all, that all Monasteries under two hundred pounds *per annum* were to have been dissolved by the Statute of 27 H. 8. and are therefore usually called the smaller Abbeys, and those of two hundred pounds a year and upwards were not dissolved till the 31 year of H. 8. and are commonly called the great Abbeys.

And upon these two Statutes this Case lately hapned in the Exchequer Chamber between *Walklate* Farmer of the Rectory of *Utoxeter* in the County of *Stafford* to the D. of *Windsor*, and *Wilshaw* owner of the Farm in

in that Parish, that was parcel of the possessions of the Abby of *Croxden* in the same County, which was one of the small Abbeyes, and of the *Cistercian* Order; which Order was freed of the payment of Tythes, as shall be shewed hereafter, and this Abbey was discovered by the defendant *Wilshaw* to be continued by Letters Patents under the great Seal of *England*, and so not dissolved till the Statute of 31 H.8. whereupon the Defendant was dismissed, and the Court clearly held the Lands discharged of payment of Tythes by the Stat. of 31 H. 8. I mention this Case for the singularity, not for any nicety in the Learning of it.

31 H.8.c.13.

31 H.8.c.8.

The Clause of
31 H.8. that
frees Abbey
Lands.

By the Statute of 31 H.8. before mentioned, there is a clause to this effect.

That the King and his Patentees, which then had, or then after should have any Monasteries, Abbathies, Priories, Nunneries, Colledges, Hospitals, Houses of Friars, &c. or any Mannors, Lands, &c. which did belong to them, should have, hold, retain, keep and enjoy the said Mannors, &c. according to their Estates and Titles discharged and acquitted of the payment of Tythes as freely and in as large and ample manner as the said Abbots, &c. or any of them had, held, occupied, possessed, used, retained, or enjoyed the same, or any part thereof at the days of their dissolution.

And the Reader is to observe, that the Abbots, &c. at the time of their dissolution held their Lands discharged four manner of legal and regular ways, which were allowed by the Laws of this Realm, to wit,

[1 By]

1. By the Bulls of Popes. 2. By real Compo-
sitions with the Parson, &c. Patron and Ordinary. 3. By Prescription: And 4. By Order.

But there is another sort of discharge, though not a legal one, has been allowed in this case to make a fifth sort of discharge, and that is perpetual unity, where the Abbot has had the Rectory of any Church and Lands in the same Parish time out of mind, which have been held free from the payment of Tythes by all the time of memory, and of these several discharges I will speak in order.

And first of discharges by the Popes Bulls it is to be understood, that when the Pope usurped a power over the Clergy here in *England*, he did at his pleasure grant Exemptions to this or that Abby, or to whom else he pleased to be freed from the payment of Tythes which was allowed as a good discharge against the Parsons and Vicars, who in many places suffer by these Bulls to this day, these Bulls being turned into Prescriptions, &c.

The second sort of discharges was by real Compositions between the Parson or Vicar, and the Abbots, Priors, &c. confirmed by the Patron and Ordinary: of these we have spoken at large before in the Twentieth Chapter, and therefore shall not repeat it, but pass to the third sort of discharges.

The third sort of discharges is by Prescription, of which we have likewise spoken at large before in the Sixteenth Chapter, to which I shall refer the Reader.

I shall only observe to the Reader again in this place, that the Abbots, Priors, and other Religious persons might prescribe generally to

T

be

be free from the payment, or to be discharged of the payment of Tythes without any recompence to the Parson, &c. but a Lay-man could not prescribe absolutely to be free from payment of Tythes, but *sub modo*, that is, paying or doing something to, or for, the Parson, Vicar, &c. in recompence and satisfaction of the Tythes, as you may at large see in the Chapter here before.

2 Inst. 653.

And it is to be observed, that no Abbot, Prior, &c. could make any such Prescription by the Common Law, that was not founded before the time of memory, that is before the first year of R.1. which is the time of the limitation of all Prescriptions at the Common Law, which rejects the practice of the Canon Law, which, as should seem, allows the limitation of a Prescription or Custom to 40 years.

It may reasonably be demanded, how this manner of discharge can be made out at this day, since there is now no Person living, that can prove how the Abbots held and enjoyed their Lands; to which I answer, that what was done before the dissolution of Abbeyes must now be proved by what has been done since; for if Monastery Lands have been held all the time of memory since the dissolution, freed from the payment of Tythes, it shall be intended, that they were so held before; and therefore they have not paid or been questioned since.

Discharge by
Order.

The fourth sort of discharge is by order, and this discharge also for the most part depends upon Popes Bulls or Grants, who at pleasure granted exemption to what orders they pleased.

About

About the Year of our Lord 1150. the most Religious Orders then in being were discharged of the payment of Tythes; but about that time Pope *Adrian* the Fourth reduced them to *Cistertians*, *Hospitaliers* and *Templers*; and about the Year 1215. Pope *Innocent* the Third added the *Præmonstratenses*. But the Priviledges granted to these Orders extended only to the Lands, these Orders held in their own manurance, and not to any which was held by their Tenants or Farmers.

Causa 16. q. 1. decimas.
2 Inst. 652.
Seld. Hist. de- cim. 120.
Decret. Grego- ni ex parte tua de decimis.
Seld. de detim. 406.
Dyer 277, 278.
4 Cencil. Lat.
Can. 56.
Causa 16. q. 1. c. 2. Decim. & ibi questi sunt.

But about the beginning of the Reign of *H. 4.* the *Cistertians* attempted to have enlarged their Priviledge to their Tenants and Farmers, which tending to the ruine of many poor Parsons and Vicars that had cure of Souls, was complained of in a Parliament held in the second year of *H. 4.* whereupon it was enacted; that not only the *Cistertians*, but all other Orders that put any Bulls in execution for the discharging any of their Lands from the pay- ment of Tythes in the hands of their Tenants and Farmers, shall incur a Premunire, that is, forfeit all their Goods and the profits of their Lands during life, and be likewise imprisoned during the offenders life: which gave such a check to that proceeding, that I do not find any thing of that nature after attempted.

The *Templers* after in the Council of *Vien-* *The Templers.*
na, which was held in the year of our Lord 2 Inst. 432.
1311. and in the fourth year of *E. 2.* were condemned for Heresie; and all their posses- sions by Act of Parliament made in the 17 year of the same King, were transferred to the *Hos-* Stat. 17 E. 2. c.
pitaliers or Knights of St. *John* of *Jerusalem*; who enjoyed them till the thirty second year of

32 H.8.c.24. the Reign of King H. 8. at which time by Act of Parliament they were settled upon the Crown.

Kelway 174.2.

But where it is said in *Kelway*, that the *Templers* were condemned of Heresie in the 8. year of E.2. and their Lands given the same year to the *Hospitaliers*, it is a great error; for it is clear, that the Council of *Vienna* was held in the fourth year of that King, and chiefly called against the *Templers*; and it is as clear that their Lands were not here in *England* settled upon the *Hospitaliers* till the seventeenth year of the same King.

Where the lesser
Abbeys may be
freed of Tythes.

And though the Lands of the lesser Monasteries be not within the benefit of the Statute of 31 H. 8. to be freed of the payment of Tythes; yet they ought to enjoy all such privileges as are annexed to the Land, and therefore such Lands in whose hands soever they come, shall be freed of the payment of Tythes; by real Compositions and Prescriptions *de modo decimandi*, but not by Prescriptions *de non decimando*, unity of possession, Order or Bulls of Popes: but in all those cases the Parsons and Vicars have the advantage by the dissolution of all those Abbeys that were dissolved by the Statute of 27 H.8. For the Parsons and Vicars shall in such case be restored to their Tythes again, which in all Justice they ought in all other cases, if the Parliament had been pleased.

Jones 3.372,
373.

The lesser Monasteries, that is, which were under 200 *l. per annum* of the Orders of *Cistercians* and *Premonstratenses* were, as has been said, dissolved by the Statute of 27 H. 8. have lost the privilege of being discharged of the payment of Tythes, unless they were con-
tinued

tinued as the Abby of *Croxden* was ; but those Monasteries of those Orders that came to the Crown by the Statute of 31 H. 8. retain the priviledge of those Orders in not paying Tythes. But this is to be understood only for such time as the Owners hold them in their own manurance ; for if they let them out to Tenants, they shall have no more priviledge than the Tenants of those Orders of the *Cisterciens* and *Premonstratenses* had, which was none at all.

But note, that if the King after the dissolution of the lesser Monasteries (which had been of any of the Orders that were discharged of the payment of Tythes) had granted any of their Lands to any of the greater Monasteries which were not dissolved till the Statute of 31 H. 8. yet those shall not retain the Priviledges the Abbots had at the time of the former dissolution ; the right immediately reverting by the dissolution to the Parsons and Vicars to whom the Tythes of right did belong, the greater Abbeyes could not hold them legally discharged at the time of the second dissolution: So that there is a manifest difference between this and the case of *Walklate* and *Wilshaw* before remembred, for in that case the Monastery was continued and not dissolved till the Statute of 31 H. 8.

And it is to be observed, that no Lands acquired by any of the Monasteries of those Orders which were so freed from payment of Tythes after the Council of *Lateran*, which was in the year of our Lord 1215, and by consequence none that were founded after that Council, are discharged of the payment of Tythes, either in their own or their Tenants

Jones 2, 3, &c.
Cro. Jac. 607.
Hob. 306.
Lands of the lesser Abbeyes granted to the bigger not freed.

Lands purchased after the Priviledges granted, not freed.
Conc. Latet. 4.
Can. 55.
Seldens *hist. of Tythes* 121.

hands, for by that Council the Priviledge was limited to such Lands as these Orders had at the time of that Council.

Dyer 277.b.
p.6c.
Cro Jac. 559.

And although any Abbey-lands of the great Abbeyes which were of the *Cistercian* and *Præmonstratensian* Orders were in the hands of Tenants for years at the time of the dissolution, yet the King and his Patentees after the Leases determined shall hold them discharged, whilst the Patentees and Owners hold them in their own hands, but the Kings Tenants shall hold them discharged because of the Royal Prerogative of his Person not being intended fit for Husbandry.

5 Perpetual
unity.
Co. 2. 47. b. &c.
Co. 11. 14. b.
Dyer 349. p. 16.
More 528.
Hob. 311.
306. 298.
300.
2 Inst. 655.
More 46, 47.
Cro. Jac. 608.

Definition.

Having now said thus much of the four legal manner of discharges before-mentioned, I shall proceed to that of perpetual unity, which cannot be said to be a legal discharge of the payment of Tythes: Yet because the Abbots, Priors, &c. at the time of the dissolution held the Lands discharged of the payment of Tythes, though not legally discharged of Tythes, it hath been resolved by many Judgments and settled, that this is a good discharge within the meaning of the foresaid clause of 31 H. 8. Now that which we call a perpetual unity is, as hath been said, where an Abbot, Prior, &c. time out of mind hath been seised of the Lands out of which the Tythes arise, and the Rectory within which Parish the Lands lie.

And it is to be observed that every perpetual unity, that shall discharge the Lands from the payment of Tythes, must have these four qualities.

First, It must be *justa*, that is, by good and lawful Title.

Secondly,

Secondly, It must be perpetual, that is, the Abby must be founded and endowed with the Land and Rectory before the time of memory, which by the rules of the Common Law, as has been said, must be before the first Year of R. 1. for if by any Records, Deeds, or other legal and good evidence it can be made appear, that either the Land or Rectory came to the Abby since the said first year of R. 1. the union is not perpetual: and yet if the Appropriation be ancient, as in the time of E. 4. or before, though the Lands cannot be discharged upon the score of perpetual unity; yet they may by Prescription, if in truth the Lands were held discharged of the payment of Tythe.

Thirdly, Such unity as shall discharge lands of the payment of Tythes within this Law, must be *equalis*, that is, the Abbots, Priors, &c. must be seised in Fee-simple, as well of the lands upon which, &c. as of the Rectory.

Lastly, Such unity must be *libera*, that is, free from the payment of any manner of Tythes; for if their Farmers at will, years, &c. have paid any manner of Tythes to the Abbots, Priors, &c. or their Farmers of the Rectories, the perpetual unity will not serve. And therefore where such perpetual unity is pleaded in discharge of Tythes, the adverse party may reply, That the Tenants or Farmers before the dissolution paid some sort of Tythes, and so avoid the perpetual unity.

Cro. Jac. 454.
Co. 2. 48. a.

Having first given the Reader satisfaction that all the lands that came to the Crown by the Stat. of 27 H. 8. and before, can have no benefit of the discharge given by the Stat. of 31 H. 8.

T 4

and

and having also shewed how many ways Lands may be discharged from payment of Tythes, that came to the Crown by the said Statute of 31 H.8. It rests now that I should say something of those Lands that have since come to the Crown by the Statutes of 32 H. 8. *cap.24* 37 H.8. *cap.4.* and 1 E.6. *cap.14.*

Co. 2. 47. a.
How other
Lands stand
that came not
to the Crown
by 31 H. 8.

It is a Rule taken in the Archbishop of *Canterburies* Case, that neither the letter, nor the meaning of the Statute of 31 H. 8. extended to free or discharge any Lands from the payment of Tythes, save those that came to the Crown by that Act; for as that Book says, it is absurd that the branch of the Statute of 31 H. 8. concerning Tythes, should be extended to a future Act, that the makers of the Statute of 31 H.8. without the Spirit of Prophecie, could not have the prescience of.

More 913.
Cro Jac. 57.
Hill. 2 Jac.

And as to those that came to the Crown by the Statute of 32 H.8. *c.24.* it was adjudged in the Case of *Spurling* and *Quarles*, that they are not discharged of the payment of Tythes.

And after in the Case between *Urrey* and *Bowyer* 8 *Jacobi* in the Common Pleas this point was moved again, and the Court was divided.

Jones 192, &c.
Latch. 89.
Hughes 392.
Bridgm. 32.

But there is a latter Judgment that seems to oppose these former resolutions, it was between one *Witton* and Sir *Richard Weston*, that was afterward Lord Treasurer, *Trin. 14. Car. 1. B.R.* and the question was, whether those Lands of the Hospitaliers that came to the Crown by the Statute of 32 H.8. *cap.24.* were discharged of the payment of Tythes by that Statute of 32 H. 8. or by the former Statute of 31. and in that Case *Dodridge* and *Jones* Justices, held that

that they were discharged within the Statute of 31 H. 8. and they did in effect deny the Books before cited to be Law, the Chief Justice *Hide* was of opinion that they were not discharged by the Statute of 31 H. 8. but by that of 32. So that by their three opinions the Defendant *Sir Rich. Weston* had Judgment; but *Whitlock* was of opinion, that those Lands were not discharged of the payment of Tythes by the one Statute or the other: Now upon the whole matter I shall submit to the Judicious Readers Judgment, whether this latter resolution be of any weight to shake the former resolutions, since in this case though there were three for giving Judgment for the Defendant, yet to the point controverted upon the Statute of 31 H. 8. there were two against two, and that they were not discharged by the Statute of 32. there were three against the Chief Justice *Hide*. So that I conceive the Law remains according to the former resolutions, that there are no Lands freed from the payment of Tythes by any Statute, but those that come to the Crown by the Statute of 31 H. 8. *tamen inde quære*.

If an Abbot, Prior, &c. that by Order, Pre-Syderfin 320.scription, &c. held his Land discharged of the payment of Tythes, had granted away his Land to a Colledge, &c. the Colledge should not hold them discharged.

I must confess I have met with no Judgments upon those Lands which came to the Crown by the Statute of 37 H. 8. but those being the same with those that came to the Crown by the Statute of 1 E. 6. cap. 14. I conceive neither those that came to the Crown by either of those latter Statutes have any privilege

Jones 185..
Co.2. 47.a.

ledge at all, and it is agreed in that very case of *Witton* and *Weston*, that those Lands that came to the Crown by 1 E. 6. could not have any benefit by the clause of discharge in the Statute of 31 H.8.

So that I shall conclude, that there is no Land can have any priviledge at this day to be discharged of Tythes that belonged to the Abbots, Priors, &c. but such only as came to the Crown by the Statute of 31 H.8. cap. 13.

CHAP. XXII.

The Two and Twentieth Chapter shews, what Personal Tythes are, and in what manner they are payable.

Lindwood cap.
Quoniam
propter verb.
decimæ perso-
nales.
*What Personal
Tythes are, and
where payable.
The Canon.*

THE Canonists define Personal Tythes thus.

Decimæ personales sic dictæ, quia potius in respectu personæ solvuntur quam rei, ut puta de artificio, negotiatione & militia. And by the Canon.

Decimæ personales solvantur de artificibus & mercatoribus, scilicet de lucro negotiationis, similiter de carpentariis, fabris, cæmentariis, textoribus, pandoxatricibus, & omnibus aliis operariis stipendiariis, ut videlicet dent decimas de stipendiis suis, nisi stipendiarii ipsi aliquid certum velint dare ad opus vel ad lumen Ecclesiæ, si Reçtori ipsius Ecclesiæ placuerit. And Mr. Lindwood in his Gloss adds,

Verbo negotia-
tionis.

*Et scias quod in istis decimis mere persona-
libus,*

libus, quæ considerantur ex solo lucro, deducuntur expensæ tam in re quam circa rem & extra rem factæ. Et nota, quod de solo lucro debetur hæc decima; unde si emens mercem eam non vendat, sed donet vel sibi retineat, non tenetur decimare, quia non lucratur.

So that it appears by the Canon Law, that every one ought to pay for a Personal Tythe a tenth part of all his clear gains, deducting all his charges and expences for a personal Tythe; but if a man buy Merchandizes, and do not sell them to profit, or give them, or make use of them himself, no Tythe is to be paid, because there is no gain made of them.

Now let us see, what the Statute of 2 E. 6. says 2 E. 6. c. 13. to us concerning personal Tythes; and by that Statute it is enacted,

That every person exercising merchandizing, The Statute for bargaining and selling, clothing, handicraft, or personal Tythes, other art or faculty, being such kind of persons, as then before within forty years had accustomedly used to pay such personal Tythes, or of right ought to pay (other than such as be common Day-labourers) shall yearly pay for his personal Tythes the tenth part of his clear gains, his charges deducted.

And where handicraft men have used to pay their Tythes within this forty years, the same Custom of Tythes is to be observed; and if any person refuse to pay his personal Tythes, &c. it shall be lawful to the Ordinary of the same Diocese to call the same party before him, and by his discretion to examine him by all lawful and reasonable means, other than by the parties own corporal Oath concerning the true payment of the said Tythes.

This

This Act of Parliament restrains the Canon Law in two things ; first, where the Canon was general, that all persons in all places should pay their personal Tythes, the Act restrains it to such kind of persons only, as have accustomedly used to pay the same within forty years before the making of the Act. Secondly, whereas by the Ecclesiastical Laws they might before this Act have examined the party upon his Oath concerning his gain ; this Act restrains that course, so that the Party cannot be examined upon Oath ; and by this Act the Day-labourer is freed of the payment of his personal Tythes.

It cannot be intended upon this Act, that if such Tythes have been sometimes paid within forty years, that they are therefore due, but they must have been accustomedly, that is, constantly paid for forty years next before the Act.

And if it be demanded how such payment must now be proved forty years before the making of the said Act ? I answer, as in other like cases *à posteriore*, by what has been done all the time of memory since the Act.

There has been some question amongst the School-men and Canonists, whether personal Tythes ought to be paid of unlawful gain, to which you shall hear what a great School-man and Doctor says :

Tho. Aquinas.
Sum. 2. 2. c. q. 87.
art. 20.
Whether due
of ill gotten
profit.

Quod si aliqua male acquiruntur dupliciter uno modo, quia ipsa acquisitio est injusta; puta quæ acquiruntur per rapinam, furtum seu usuram, quæ homo tenetur restituere, non autem de eis decimam dare, tamen si aliquis ager sit emptus de usura, de fructu ejus tenetur usurarius

varius decimas dare, quia fructus illi non sunt de usura, sed ex Dei munere: quædam vero dicuntur male acquisitæ, quia acquiruntur ex turpi causa, sicut de meretricio & histrionatu, & aliis hujusmodi, quæ non tenentur restituere unde de talibus tenentur decimas dare, secundum modum aliarum personalium decimarum, tamen Ecclesia non debet eas recipere, quamdiu sunt in peccato, ne videatur eorum peccatis communicare, sed postquam penituerint, possunt ab eis de his recipi decimæ.

So that by this great Doctors opinion it seems, that of ill gotten gain, of which restitution ought to be made, no personal Tythe is due, and yet if by ill gotten gain a field be purchased, Tythe ought to be paid of the fruits thereof: but of ill gotten gain, where no Restitution is to be made, there Tythes ought to be paid, but not received by the Church, till the sinner have repented him of the evil, and after such repentance the Church may receive them.

Lindwood cap. Quoniam propter verb. injuste acquisit. in the Gloss, & Greg. decret. cap. ex transmissa in the Gloss verbo injuste.

These personal Tythes are accounted amongst the offerings, of which we are to speak next, and ought by the Parishioner to be offered to the Church where due; but I am of the opinion of him, that said, *Hæ decimæ personales magis difficultate & subtilitate quam utilitate existunt.*

It hath been resolved, that Servants in Husbandry shall not pay any personal Tythe.

Rolls 1. 646. 2. 1.

Hawking, Hunting, Fishing, Fowling, &c. fall under these Rules of personal Tythes.

CHAP. XXIII.

*The Twenty Third Chapter shews,
what Oblations, Offerings, &c. are,
and where due.*

*Oblations and
Offerings what,
and where due.*

Offerings are defined by the Canonists to be.

Quæcunque à piis, fidelibus Christianis offeruntur Deo & Sanctæ Ecclesiæ, sive res soli, sive mobiles sint, nec refert an legantur Testamento, aut aliter donentur.

Greg. 78. habetur de Consecrat. div. 1.
Can. 4.

It should seem, that in the time of Popery there was an expectation, that every one present at Mass should offer something; for Saint Gregory tells us, *Quod omnis Christianus procuret ad missarum solennia aliquid Deo offerre.*

And by a Canon in the Council *Marisc.* it is decreed, *ut omnibus dominicis diebus altaris oblatio ab omnibus viris & mulieribus offeratur, tam panis quam vini, ut per has immolationes, &c.*

Becan. Sum.
Theol. 3. q. 86.

But *Becanus* a learned Jesuite is more moderate; for he tells us, *Quod nemo tenetur ad illas Oblationes, nisi vel necessariæ sint ad sustentationem ministrorum, vel consuetudo ad eas alicubi obliget.*

Can. Damas.
Pap. Et habetur
10. q. 1.

And these Offerings belonged properly to the Priest or Minister of the Church or Place where they were made; for so is the Canon of Pope *Damasus*.

Quod Oblationes quæ intra sanctam Ecclesiam offeruntur, tantummodo Sacerdotibus qui quotidie servire videntur, licet comedere & habere, &c.

But

But it should seem, that private Chappels carried away many of the offerings belonging to the Mother Churches, to avoid which *Orthon* the Popes Legate here made a Canon to remedy that mischief to this purpose,

Quod Capellani ministrantes in Capellis hujusmodi, quæ salvo jure matricis Ecclesiæ sunt concessæ, universas Oblationes & cætera quæ ipsis non recipientibus ad Ecclesiam matricem provenire deberent, ipsius Ecclesiæ Rectori sine difficultate restituant, cum illud tanquam alienum, juste nequeant retinere. Si quis autem restituere contempserit, suspensionis vinculo, quousque restituerit, se noverit innodatum. Cap. De Oblationibus.

So that it seems by this Canon, that Chapels that had Parochial Rights, the Chaplains of them might retain the offerings, but where the Parochial Rights were saved to the Mother Church, the Chaplains of such Chappels were to account to the Rector of the Mother Church for the Offerings made at such Chapels.

There was another Canon made by *Simon Mepham* Archbishop of Canterbury, and his Clergy in the year of our Lord 1328. reciting,

Quia quidam maledictionis filii in nubentium solennis, purificationibus mulierum, mortuorum exequiis, & aliis, in quibus ipse dominus in ministrorum suorum personis solebat oblationum libamine populariter honorari, ad unius Denarii, vel alterius modicæ quantitatis oblationem, populi devotionem restringere sunt moliti, residuum oblationis fidelium suis pro libito, vel alienis usibus multoties applicantes: Præsentis declaratione Consilii declaramus & pronunciamus, omnes & singulos in præmissis,
vel

Cap. Quia quidam maledictionis, &c.

vel eorum aliquo imposterum delinquentes, vinculo majoris excommunicationis involvi.

So that upon the whole matter it appears, there were some offerings free and voluntary, which the Parishioners or others were not bound to perform, but *ad libitum*. There were others by Custom certain and obligatory, as those for Marriages, Christnings, Churching of Women, Burials, &c. and that these were all due, and belonged to the Parish Priest or Minister, that officiated at the Mother Church or Chappels, that had Parochial Rights; the other Chappels that had not Parochial Rights, were to account to the Rector for the Parish Church: now let us see, what the Statute of 2 E. 6. says, by which it is enacted,

2 E. 6. c. 13.
The Statute for
Offerings.

That all and every Person and Persons, which by the Laws and Customs of this Realm ought to make or pay their offerings, shall yearly from thenceforth well and truly content or pay his or their offerings to the Parson, &c. of the Parish or Parishes, where it shall fortune or happen him or them to dwell or abide, &c.

These Offerings which were free and voluntary are now vanished, and are not comprehended within this Law; but those that were customary and certain, as for Communicants, Marriages, Christnings, Churching of Women and Burials, are confirmed to the Parish Priest, Vicars and Curates of the Parishes, where the parties live that ought to pay the same; and they are only recoverable in the Spiritual Court, or an Action (I conceive) may be formed upon this Statute at Common Law.

CHAP. XXIV.

The Twenty Fourth Chapter shews, what Mortuaries are, and in what Cases they are due at this day, and how much is to be paid for the same.

BY a Provincial Canon made by Simon Langham Archbishop of Canterbury and his Clergy, in the year of our Lord 1378. it was decreed.

Where, and what is due for Mortuaries.

Quod si decedens tria vel plura cujuscunque generis in bonis suis habuerit animalia, optimo & infra, &c. cui debitum de jure fuerit reservato: Ecclesie sue, à qua Sacramenta recepit, dum viverit, sine dolo fraude seu contradictione qualibet pro recompensatione subtractionis decimarum personalium, nec non & oblationum, secundum melius animal reservetur post obitum pro salute anima sue Ecclesie sue hujusmodi liberandum: quod si duo tantum in bonis decedentis extiterint animalia, de mansuetudine Ecclesie exactio qualibet nomine mortuarii remittatur: quodque si Mulier viro superstite obierit, ad solutionem mortuarii minime coerceatur; Sed si post obitum mariti, in domo cum familia regimine vidua per annum supervixerit, juxta formam superius scriptam ad mortuarium obligetur: Hac autem interpretatione, consuetudini laudabili super mortuariis in nostra provincia aliter observare nolumus prajudicium generali; quin si decedens numerum hujusmodi animalium habuerit seu non habuerit virve

Cap. Statutum & infra, &c. The Canon.

*aut uxor prius vel post decesserit, super prae-
statione mortuarii consuetudo Ecclesiastica obser-
vetur: ad solutionem autem debiti de jure vel
consuetudine mortuarii renuentes, volumus per
ordinarios locorum censura Ecclesiastica co-
arctari.*

How far this Canon was obeyed in Eng-
land I can give no account, but I have not
found the English willing to have their Estates
taken from them by Canons, nor have found
that any Prohibitions have been granted in
case of Mortuaries; nor have I observed any
complaints in Parliament against them (save
that 2 R.2. it is prayed that Parsons and Vicars
might not require Mortuaries of the Armour of
any Man; but that it might remain to their
Executors) till the 21 H. 8. and then they
were settled by Statute as follows,

St. 21 H.8.c.4.
The Statute for
Mortuaries.

1. That no Man should pay a Mortuary un-
less he died possessed of Goods to the value of
ten Marks, that is, six pounds thirteen shillings
and four pence.

2. That no Mortuary should be paid or de-
manded, but in such places where they have
used to be paid or given.

3. That they should be paid but in one place,
and that at the parties most usual dwelling
and habitation, and there but one Mortuary, and
that after the rate following, that is to say,

4. That if the decedent at the time of his
death, had in moveable Goods to the value of
ten Marks clearly, his debts first paid and un-
der the sum of thirty pounds, then he should pay
three shillings and four pence and no more, and
this must be in moveables, and not in Chattels
as Leases for years, &c.

5. That

5. That if the decedent died possessed of moveables of the value of thirty pounds, and under the value of forty pounds, to pay six shillings and eight pence for a Mortuary.

6. If the decedents Goods be of the value of forty pounds or upwards, then to pay ten shillings for a Mortuary.

7. That no married Woman, Child, or Person not keeping House should pay any Mortuary, nor a wayfaring Man, or other that was not resident where he died, but those to pay where they were last resident.

8. The Parson or Vicar are not by this Act barred of any Legacy given, or Offering to be made to them.

9. No Mortuary to be paid in Wales, Callis or Barwick, or in the Marches of Wales, but where accustomed.

10. It is provided that the four Welch Bishops, and the Archdeacon of Chester may, notwithstanding this Act, take their accustomed Mortuaries.

11. That where less hath accustomably been taken for Mortuaries than is limited by the Act, there no more than is due by the Custom shall be taken.

Sir Edward Coke is of opinion that there were no Mortuaries due before this Act by any Law, but by Custom only; by reason of the words in the Statute of *Circumspectè Agatis*, which are, *ubi mortuarium dare consuevit*, &c.

This duty was formerly only suable for in the Court Christian, but now I conceive an Action of Debt will lye at Common Law upon this Statute, for though this Statute is only

negative, that they shall not take above such rates, yet it implies affirmative, as the Statute of 2 E.6. for barren Grounds, and the Statute for the Sheriffs Fees and other Statutes.

Jeoffries verſ.
Wood. Hil. 22,
and 23 Car. 2.
B.R.

But if a Suit be commenced for a Mortuary in the Spiritual Court, no Prohibition shall be granted to stay their proceeding there, unless they proceed contrary to the Statute.

Mortuaries to
the King by
Bishops.

For those Mortuaries that Prelates anciently paid to the Kings of this Realm, I shall not trouble the Reader with, but refer those that are curious to inform themselves, to Sir Edward Cokes Commentary upon *Magna Charta*, and his Jurisdiction of Courts:

2 Inst. 491.
4 Inst. 338.

10 H. 4, 1. b.

In the Tenth of *Hen. 4.* A Vicar claimed a Mortuary by Custom, and not by the Canon, or any other Law, *quod nota.*

Their Names.

These Mortuaries are in some places called coarse presents, or coarse presentees, as Doctor Cowel says, because where due, they used to pay them before the Coarse was buried, when it was brought to be buried.

Cro. Car. 237,
238.

Bishop of Che-
ster his demand
as Archdeacon
of Chester.

The Bishop of *Chester* claimed by Custom upon the death of any Priest, dying within the Archdeaconry of *Chester* for a Mortuary, his best Horse or Mare, Saddle, Bridle and Spurs, his best Gown, a Cloak, his upper Garment next it, his best Hat, his Tippet, his best Signet or Ring, and this Custom was denied by the Plaintiff in a Prohibition, but what the Success was I have not heard, but the Mortuaries due to the Archdeacon of *Chester* are excepted: and the Bishop of *Chester* holds that Archdeaconry, as I have been informed, in the nature of a *Commendam*, and executes it by a Deputy.

Mr.

Mr. Swinborn is of opinion, that these Mortuaries are to be paid out of the decedents part of the personal Estate where the Wife and Children are to have their reasonable part, the reason he gives is because Mortuaries are of the nature of Legacies. But I must confess I am not of his opinion, for I look upon it as a debt or duty to which the personal Estate is subject.

Office of Executor.
Lib. 6. §. 16.

CHAP. XXV.

The Five and Twentieth Chapter shews, how Tythes are to be paid in London.

THE Livelyhood of the Clergy in London, I mean the secular Clergy, consisted heretofore chiefly in voluntary Offerings and personal Tythes, which little differ from voluntary Offerings. For though a great Doctor tells us that,

In prapuis festivitatibus tenetur quis offerre, & cogi potest, maxime cum sit quasi generalis consuetudo ubique terrarum, &c.

Hostiensis c.
Omnis Christianus.

And if you ask him which are those Feasts at which the People are bound to offer, he tells you, *Dies dominicos, & dies festivos.*

Idem de Faroc.
Sect. In quibus, &c.

But there being no Canon or Law that prescribes any certainty in the quantity, value, or things to be offered, I can give them no proper name than voluntary or free will offerings. But no sooner was Popery abolished in this Nation, but these voluntary Offerings and

personal Tythes soon came to little. And notwithstanding it was enacted by the Statute of 2 E.6. That all that by Law or Custom were bound to make their offerings should thenceforth pay them to the Parson, &c. yet that did not much amend the matter, so that the maintenance of the secular Clergy in London was brought to a very low ebb, there being no Tythe, as hath been said, chargeable upon houses, unless by way of a *Modus decimandi*, whereupon the Clergy of London in the 37th year of the Reign of King H. 8. made their application to the Parliament, and obtained an Act of Parliament for the confirming a Decree made by the Archbishop of Canterbury and divers other great Lords of the Kingdom, to settle the matter, the effect whereof follows, which is printed amongst the other Acts of Parliament.

St. 37 H.8.c.12.

The Decree.

1. That the Citizens of London from thenceforth for ever, should pay yearly without fraud or guile to their Parsons, &c. for the time being, for every ten shillings rent of all houses, shops, warehouses, cellars and stables, within the said City of London and the Liberties of the same, 16 d. ob. and for every 20 s. rent 2 s. 9 d. and so ascending for every 10 s. rent.

2. That if any dwelling houses, shops, &c. should be leased by fraud or covin, reserving less Rent than hath been accustomed; or shall by reason of Fine, or by fraud or covin, make any Lease without reserving any Rent, then the Farmer or Tenant shall pay after the same rate, the said house, &c. was last let for without covin; but note, that if the house, &c. be let at as great a Rent, as the same was set at the time
of

of the making of the said Statute, then no fraud can be averred, although a Fine or Income was given for the said Lease.

3. That if a House, &c. be leased, and no ^{2 Inst. 659.} Rent at all reserved, then such house, &c. shall pay such rate as the same was let for at the time of the making of the said Statute; but where greater Rent is reserved, it is to pay according to the best improved value.

But where Houses had been always held by ^{2 Inst. 660.} the Owners, and, by consequence, no Rent paid, ^{Lit. Rep. 141.} that is casus omissus in this Statute, and such ^{ib.} houses will be freed of payment of Tythes by this Law.

But if it were a House, that yielded Rent at the time of the making the Decree, and be now let without Rent, it shall pay Tythe according to the Rate it was set for at the making of the Decree, although no Fine at all were paid for such Lease. ^{Lit. Rep. ubi supra.}

5. The Tythes upon this Decree cannot be sued for in the Ecclesiastical Court, because the Act itself declares how they shall be recovered.

6. That if the Owners held the Houses themselves, then they shall pay Tythe after the rate the same were set for at the time of the Decree.

7. That if any person take any House, &c. by Lease, and he and his Executors, &c. live in part of it, and set out part, the principal Farmer or Taker, his Executors, &c. shall pay their Tythes for his and their parts after the rate aforesaid, and of such parts as is farmed out according to the rate it is set at. And in the same manner Tythes are to be paid, where one takes a Lease of several Houses, and lets out part, and holds any part himself.

8. That if any Farmer, or his Assigns shall farm all the Houses, &c. so farmed to one or divers Tenants, the Tenants shall pay Tythes according to the Rent reserved.

9. That if dwelling Houses shall be converted into Warehouses, or e converso, yet they shall pay Tythe according to the Rate aforesaid.

10. That if a Dye-house or Brew-house be let with the Implements, then a third penny of the Tythes after the rate abovesaid to be abated.

11. That where a Mansion-house with shops, stables, wharfs, with Crane, Timber-yard or Gardens belonging to the same, and occupied together shall afterwards be severed, or were severed within 8 years before the Decree, that then the Farmers of the shops, stables, &c. shall pay Tythes according to the Rate abovesaid.

12. That these Tythes shall be paid quarterly at Easter, Midsummer, Michaelmas and Christmas.

13. That any Householder, that holds a House of 10 s. Rent, or above shall be acquit of his Offerings; but his Wife, Children and Servants shall pay 2 d. yearly for their four offering days, receiving at Easter.

14. That if any House of 10 s. Rent or above, shall be let by parcels under 10 s. Rent, then the Owner, if he live in any part of the house, or the chief Tenant, shall pay the Tythe after the rate as the same House was accustomedly letten before such division, and the Subtenants, that hold less than 10 s. per annum, without fraud or covin shall pay 2 d. yearly for their Offerings.

15. That no Tythe shall be paid for any Gardens belonging to any Mansion-house, and which are held for pleasure; but if such Gardens contain half an Acre of ground or more, and shall make any yearly profit by Sale, then the same to be paid for, according to the rate above-said.

16. This Act is not to extend to the Houses of Noblemen or Noblewomen whilst they are kept in their own hands, and not let for Rent, and which formerly paid no Tythe, so long as the same continue unletten, nor to the Halls of any Craft or Companies so long as the same are unletten, and in times past paid no Tythes.

17. That Sheds, Stables, Cellars, Timber-yards and Tenter-yards, which were never parcel of, or belonging to any dwelling House, and which have not been used to pay Tythes, shall be acquit of the payment of Tythes, as hath been accustomed.

18. But if by custom any lesser rate have been paid than after the rate of 2 s. and 9 d. in the pound, then the accustomed rate only to be paid.

19. The Lord Mayor of the City of London, by the Advice of Council is Authorized by the said Act, to hear and determine all differences arising upon this Decree, and give costs according to the intent thereof.

20. That if the Mayor do not make an end, of such differences within two Months after complaint; or if any person find himself aggrieved by his Decree, then the Lord Chancellor within three Months after complaint to him made, shall make an end of the differences with costs, &c.

21. *That if Rents fall by reason of decay or burning, to less than they were accustomedly letten, That then the Tythes during such Term, shall be paid according to the Rent reserved.*

This is a short abstract of that great Decree which I have inserted here for the use of the Clergy of that City, I shall only add some other resolutions upon this Decree, and conclude this Chapter.

Noy 130.
Where Suits for Tythes in London shall be determined.

In a Case between Dr. Meadhouse and Dr. Taylor it was resolved, that Suits for Tythes upon this Decree should be before the Mayor in Writing, and not by Parol.

2. That a Reservation by a Lessor for life upon a Lease by him made for years, shall not bind him in Reversion to pay Tythes according to that rate.

3. That a Rent for half a year, and after for another half year is a yearly Rent within this Decree.

Cro.El.276.
More 912.

It hath been resolved that Abbey-Lands within the City of London and the Liberties thereof are not freed from the payment of Tythes within the Statute of 31 H. 8. because the Statute and Decree for the payment of Tythes within the City and Liberties of London was made after the Statute of 31 H.8. and their Priviledges are not reserved.

Verf. Scudamore.

5 Jac.C.B.

Cro.Jac.6.613.

It hath been resolved that if the Rents be continued as they were at the time of the making of the Statute though upon new Fines that the Tythes shall be paid accordingly. But if upon new Fines less Rent be reserved, it shall pay Tythes as it did before.

And

And if no Rent be reserved, nor Fine paid ; the Parson shall have his Tythes according to the Rent at the time of the Decree.

But if a House have always been held by the Owners , and no Rent paid, it shall pay no Tythes within the Decree.

The Decree was inrolled 5 Martii 38 H.8. although the Inrolment cannot be found.

And it was resolved that if the Mayor of London shall make any Decree against Law, a Prohibition lies ; for the exposition of all Acts of Parliament belongs to the Judges of the Common Law.

And it hath been resolved that though a House in London stand void without any Tenant at all, that yet notwithstanding it shall answer Tythes to the Parson.

And it hath been resolved that if any Suit be brought in the Ecclesiastical Court, or any other Court than is directed by the Act, a Prohibition lies.

Lastly, Where the Decree says (where no Rent is reserved by reason of any fine or income paid before hand) that is put only for Example, for if no Rent be reserved for this, or any other cause or consideration, it is within the meaning of this Clause.

But if any Tythe in London be due by Custom, they may be sued for in the Exchequer, notwithstanding the Statute.

Dr.Burgefs.
Parson St.Mag-
nes vers. Sy-
monds.
Scaccar. M.
4 Car.1. per
Henden.
2 Inst.660.:

Littl.Rep. 102.

CHAP. XXVI.

The Twenty Sixth Chapter shews, in what Court the Right of Tythes is determinable, and how, and in what manner to be recovered, and in what Cases Prohibitions are usually granted, and how prosecuted and defended.

2 Inst. 661.
490.
Seld. hist. de-
cim. 412.
Lamb. Saxon
Laws 45.

Seld. 414.

Seld. 414. &c.

THAT Tythes were anciently determinable in the County and Hundred Courts, is asserted both by Sir Edward Coke and Mr. Selden: And the same appears by the Laws of King *Ethelstan* long before the Conquest; and Mr. Selden is of opinion, that the Bishops Consistory here in *England* was not settled till the time of *William* the Conquerour, who by his Charter commands, *ut nullus Episcopus vel Archidiaconus de legibus Episcopalibus amplius in Hundredo placita teneant, nec causam quæ ad regimen animarum pertinet ad iudicium secularium hominum adducant, sed quicumque secundum leges Episcopales de quacunque causa vel culpa interpellatus fuerit, ad locum, quem ad hoc Episcopus elegerit & nominaverit, veniat, ibique de causa sua respondeat, & non secundum Hundret. sed secundum Canones & Leges Episcopales rectum Deo & Episcopo suo faciat.* And closes thus, *Hoc etiam defendo, ut nullus Laicus homo de legibus, quæ ad Episcopum pertinent se intromittat;* yet notwithstanding, as Mr. Selden observes, the Jurisdiction of Tythes was not so settled in the Bishop and Ecclesiastical

fiastical Courts, but there were Suits for Tythes as well in the Temporal as Ecclesiastical Courts, whereof he gives some Instances. And amongst the Laws of King H. 1. I find this Clause, *Si quis rectam decimam superteneat, vadat prapositus Regis & Episcopi & terræ domini cum presbytero, & ingratis auferant; & Ecclesiæ cui pertinebit, reddant, & nonam partem relinquant ei qui decimam dare noluerit.* Leg. H. 1. c. 11. Lamb. 182.

But the Law hath been now long settled that the Ecclesiastical Courts have in some cases the power to determine the right of Tythes, and in all cases to hold plea for the subtraction and withholding of Tythes, and confirmed by several Acts of Parliament.

To the first, If a dispute happen between two Parsons, to which of them the Tythes belong, whether to the one by Parochial Right, or the other as a portion belonging to his Rectory by prescription, and both Parsons claim by presentation under the same Title, so that the right of Patronage comes not in dispute, the right of these Tythes shall be determined in the Ecclesiastical Court, and no Prohibition or *Indicavit* shall hinder it, and this Suit in the Ecclesiastical Court is called a Spoliation. 35 H. 6. 30. 38 H. 6. 22. per Fortescue. Where the Spiritual Court may determine the Right of Tythes.

And this Jurisdiction is so peculiar and annexed to the Spiritual Courts, That if the one Parson should bring an Action of Trespass at the Common Law against the other Parson, for the taking or carrying away Corn or other things set out for Tythe, the Defendant may by way of Plea shew, that the Goods in question were Tythes set forth and severed from the nine parts, and that he is Parson of Dale, and 38 H. 6. 21. 5 H. 5. 40. 14 H. 4. 17. 2. b. Where the temporal Courts have no Jurisdiction of Tythes.

and that he and all his Predecessors time out of mind have had these Tythes as a portion which belonged to his Church, and that the Plaintiff being Rector of the Parish where they grew, claims them as his Tythes, and demand Judgment, if the Kings Court will hold plea, by such plea the Kings Court shall be ousted of Jurisdiction, but if the dispute in such Action fall out in pleading to be about the bounds of the Parishes, then the Kings Court shall not be ousted of Jurisdiction.

* 5 H.6.10.

50 E.3.20.

38 E.3.6.

39 E.3.23.

5 H.5.10.

1 H.6.5.

44 E.3.39.

20 H.6.17.

2 H.4.15.

31 H.6.11.

2 E.4.15.

* And so it is, if the question be between the Farmer, Bailly, or Servant of the one Parson, and the Farmer, Bailly, &c. of the other, or the other Parson himself; in such cases, though the dispute does appear to be concerning the right of Tythes between the Parsons the Court shall not be ousted of the Jurisdiction because they are not both Clergy-men.

But in all these cases where the right of Tythes is in dispute between one Parson and another, in whose names soever the Suit is in the Spiritual Court, I perceive no Prohibition lies, if both Parsons come in by the same Title of Patronage, so that the right of Patronage came not in dispute.

And I take the Law to be the same where the question arises between the Parson who is Patron, and the Vicar, whether Tythes belong to the Parson or Vicar.

40 E.3.28.

35 H.6.39.

Noy 147.

More 907.

West.2.c.5.

Circumspecte

Agatis, Arti-

culi Cleri, c.2.

But where the right of Tythes is controverted between two Clergy-men which come into their Churches by several Patrons, there in that Case the Spiritual Court hath not Jurisdiction to determine the right of the Tythes, if they amount to the fourth part of the yearly value

value of the Church; but the Title is to be determined by Writ of Right of Advowson of Tythes as shall be shewed more at large, when I shall come to shew in what cases the right of Tythes is determinable in the Kings Court. But in that case if the Tythes in question do not amount to the fourth part of the value of the Church, the Ecclesiastical Court may determine the right in a Spoliation. *Where the Spiritual Court cannot determine the right of Tythes.* F.N.B. 37.E.

But it should seem that if they claim both by one Patron, there though the whole Tythes come in debate, the Title shall be determined in the Spiritual Court by a Suit in the nature of a Spoliation.

But the Jurisdiction of the Ecclesiastical Courts to hold Plea for the subtraction and withholding of Tythes, as the same hath been very ancient, so it hath been confirmed by several Acts of Parliament, as I shall shew; the first of which is that of *Circumspecte Agatis* made in the Ninth year of E. 1. by which it is enacted, That, *Si Rector petat versus parochianos oblationes & decimas debitas & consuetas; vel si Rector petat versus Rectorem de decimis majoribus vel minoribus, dummodo non petatur quarta pars valoris Ecclesiæ; Item si Rector petat mortuarium in partibus ubi mortuarium dari consuevit; Item si prælatus aliqujus Ecclesiæ vel advocatus petat à Rectore pensionem sibi debitam, omnes hujusmodi petitiones sunt faciendæ in Foro Ecclesiastico, &c.* and concludes, *In omnibus prædictis casibus habet Judex Ecclesiasticus cognoscere, Regia prohibitionem non obstante.* *Spiritual Jurisdiction confirmed by several Acts of Parliament.* By the Statute de circumspecte Agatis.

There

That it is an
Act of Parlia-
ment.

2 Inst. 487.
Seld. hist. de-
cim. 424.

And extends to
all England.

2 Inst. 487.

Observations in
the penning of
it.

There hath been some question made whether this were an Act of Parliament or not, but it is proved by Sir *Edward Coke* by many unanswerable reasons to be an Act of Parliament, and so agreed by Mr. *Selden*, and almost all others.

Secondly, admitting it to be an Act of Parliament, it hath been doubted whether it extended further than to the Diocess of *Norwich*, it seeming to be appropriated by the penning to that Diocess alone; but by the general opinion of the learned it extends to all other Diocesses, and *Norwich* is only put by way of example.

And the prudent penning of this Law by our Ancestors deserves the Readers observation, how careful they were to preserve their own rights, and avoid the incroachments of the Clergy, who were in those days very powerful: for first, they would not give way to the Canons to destroy their Customs and Prescriptions allowed by the Common Law, and therefore give the Spiritual Judge Jurisdiction of Tythes and Oblations (*debitas & consuetas*) only.

2. They would not expose their Rights of Patronage to the determination of the Spiritual Judge, and therefore this condition is annexed, *Dummodo non petatur quarta pars valoris Ecclesie*.

3. Lastly, they would not subject themselves to pay Mortuaries according to the Canon Law, but *ubi dare consuevit*; so that if any Suit were sued for Tythes, Offerings, Mortuaries, not due as well by Custom as Common Law, a Prohibition lay, and doth lye at this day.

The second Statute concerning the Jurisdiction of the Spiritual Courts in case of Tythes, is the Statute of *Articuli Cleri*, but I shall pass it by here till I come to speak of the Writ of *Indicavit*.

The next Statute I meet with that concerns ^{18 E.3.cap.7.} this matter, is the Statute of ^{18 E.3.ca.7.} which I shall pass by also till I come to speak of the determination of the right of Tythes by *Scire facias*.

There was another Statute made ^{1 R.2. it is 1 R.2.cap.13.} ^{cap. 13.} for the punishing of such as indicted those that sued in the Spiritual Courts for subtraction of Tythes, or compelled them to desist by Bonds or otherwise; but that Law being now become obsolete, and besides my purpose, I shall proceed to the Statute of 27 H. 8. by which it is enacted,

That every Subject of England, Ireland, ^{27 H.8.c.2d.} Wales, Callais, and the Marches of the same, should according to the Ecclesiastical Laws and Ordinances of the Church of England, and after the laudable Usages and Customs of the Parishes or other places where he dwells or occupies, shall yield and pay his Tythes and Offerings, and other duties of holy Church: and that for subtraction of such Tythes, &c. may by due process of the Kings Ecclesiastical Laws convent the Person, &c. so offending, before his Ordinary or other competent Judge, &c. having Authority to hear and determine the right of Tythes, &c. And to compel the party offending to do and yield their duties in that behalf. And in case the Ordinary, &c. for any contempt, contumacy, disobedience, or other misdemeanour of the Party Defendant shall make information to

any of the Kings most Honourable Council, or to the Justices of the Peace of the Shire where the offender dwells, to assist and aid the Ordinary, &c. and to order and reform any such Person, in any cause before rehearsed, that then he of the Kings Council, or such two Justices of the Peace, whereof one to be of the Quorum, to whom such information or request shall be made, shall have power to attach, or cause to be attached the Person, or, &c. against whom such information shall be made, and to commit the same Persons to Ward, there to remain without Bail or mainprise until he, &c. shall have found sufficient Surety to be bound by Recognizance, or otherwise, before the Kings Councillor, or, &c. or any other like Councillors, or Justices, &c. to the use of the King, to give due obedience to the Process and Proceedings, Decrees and Sentence of the Ecclesiastical Court wherein such Suit, &c. shall depend or be. And further gives power to the said Counsellor, or to two Justices of the Peace, whereof one to be of the Quorum, to take, receive and record such Recognizance and Bonds.

There is a Proviso in this Act, that it shall not extend to London.

And another Proviso, that the party sued may have all legal Defences, Appeals and Prohibitions.

*Observations
upon this Law.*

And it is to be observed that this Law extends to all sorts of Tythes, mixt and personal, as well as predial.

Next he that will have the benefit of this Law, must sue for the single value, and not for the double value upon the Statute of 2 E.6.

Thirdly,

Thirdly, the Plaintiff in the Ecclesiastical Court may proceed upon this Act for contempt, contumacy, or misdemeanour, as well before as after Sentence.

Fourthly, The security upon this Act may as well be by Bond as Recognizance.

Lastly, observe the wary penning of this Act; they must pay their Tythes and other Church Duties, according to the Ecclesiastical Laws and laudable Customs and Usages of the place; next, if it be demanded before whom suit upon this Statute shall be made, it is answered by the Statute it self, it must be before such Judge as hath Jurisdiction of the Cause, so that it creates or enlarges no Jurisdiction.

The next Act of Parliament concerning this matter is the Statute of 32 H. 8. by which ^{32 H.8.ca 7.} it is enacted, that all and singular persons, &c. shall fully, truly and effectually divide, set out, yield or pay all and singular Tythes and Offerings, according to the lawful Custom and Usages of the Parishes and places where, &c. and in case any person, &c. to detain or withhold any of the said Tythes or Offerings, or any part or parcel thereof, that then the person Lay, or, &c. shall or may convent the person, or, &c. before the Ordinary, according to the Ecclesiastical Laws, &c. and so proceed to Sentence according to the Proceß and course of the Ecclesiastical Laws.

And that if any party appeal against the Judges Sentence, he shall then assess the Costs of his Suit therein before expended, and shall compel the Appellant to pay the said costs by the compulsory Proceß and Censures of the said Laws, taking security of the said party, to

whom the said Costs shall be paid, to repay the same, if the Appeal be adjudged against him.

And if any Person after sentence definitive given against him, shall obstinately and wilfully refuse to pay their Tythes, or the sum adjudged, that then two Justices of the Peace, whereof one shall be of the Quorum, shall, &c. upon Information, Certificate, or complaint to them made by writing by the said Ecclesiastical Judge, &c. cause the party refusing to be attached and committed to the next Gaol, there to remain till he, &c. have found sufficient sureties to be bound by Recognizance or otherwise before the same Justices to the use of the King to perform the said definitive Sentence.

Provided that no person, or, &c. to be sued or otherwise compelled, to yield, give or pay any manner of Tythes for any Manor, Lands, &c. which by the Laws or Statutes of this Realm are discharged, or not chargeable with, &c. Tythes.

Provided that this Act shall not extend, or be expounded to give any remedy, cause of Action, or Suit in the Courts Temporal against any person, &c. which shall refuse or deny to set out his or their Tythes, or which shall detain, withhold or refuse to pay his Tythes or Offerings, or any parcel thereof: but that in all such Cases the person or persons, being Ecclesiastical or Lay persons, having cause to demand or have the said Tythes or Offerings, or thereby wronged or grieved, shall take and have their remedy for their said Tythes and Offerings in every such Case in the Spiritual Courts, according to the Ordinance in the former part of the said Act mentioned, and not otherwise, any thing, &c.

1. It appears by the Preamble of this Law, *Observations upon this Statute.* that this Act was particularly designed for the relief of Impropriators, who before this Act were not capacitated to sue in the Spiritual Courts for the subtraction of Tythes, and were hard put to it to find any other relief.

2. Where by the former Act the party for Contumacy, &c. might be compelled to give security before Sentence, in this case of the Lay Impropriators the Party cannot be compelled to give security till after definitive Sentence.

3. Upon this Law there must be two Sureties at least, upon the former one sufficed.

4. The security in this, as the former, may be by Bond or Recognizance.

5. Whosoever will have the benefit of this Act, must sue particularly upon this Law for the single value, and not for the double value upon the Statute of 2 E. 6.

6. This Law extends, as the former did, to all manner of Tythes and Offerings.

7. *London* is excepted out of this Act, as it was in the former.

8. This Law only extends to customary Tythes, and not for Tythes due by Canon and Ecclesiastical Laws.

9. This Act only extends to such as shall obstinately and wilfully refuse to perform the Sentence of the Ecclesiastical Judge, and for no other contempt or neglect.

10. Lastly, this Act restrains the Suit to the Ecclesiastical Court upon this Statute, otherwise an Action, as should seem, might have been brought at Common Law upon this Statute for not setting forth, &c. of their Tythes.

The Parsons Counsellor: Part II.

But divers defects appearing in this Law, especially to the Lay-Impropriators, they obtained a more effectual Law for their purpose in 2 E.6. by which it is enacted,

St. 2 E. 6. c. 13.

That if any person carry away his Corn or Hay, or other predial Tythes before the Tythe thereof be set forth, or willingly withdraw his Tythes of the same, &c. that then upon due proof thereof made before the Spiritual Judge, or any other Judge to whom heretofore he might have made complaint, the party so carrying away, withdrawing, letting or stopping, shall pay double the value of the Tenth or Tythe so taken, lost, withdrawn or carried away, over and besides the costs, charges and expence of the Suit in the same, the same to be recovered before the Ecclesiastical Judge according to the Ecclesiastical Laws.

There is a Proviso in this Act, that gives occasion of many Prohibitions to this effect:

That no person shall be sued, or otherwise compelled to yield, give or pay any manner of Tythes for any Manors, Lands, Tenements or Hereditaments, which by the Laws and Statutes of this Realm, or by any privilege or prescription are not chargeable with the payment of such Tythes, or that be discharged by any Composition real.

Extends only to predial Tythes.

This Paragraph of this Statute as to the double value, extends only to predial Tythes, as Corn, Hay, Wood, Flax, Hemp, Fruit, &c. but for mixt and personal Tythes, there is a provision after in this Act.

Sole Jurisdiction to the Spiritual Courts.

There is also another Proviso in this Statute as in the former, which restrains all Suits for subtraction of Tythes to be sued in the Ecclesiastical Court, and that it shall not be lawful to sue

sue any withholder of Tythes, Obventions, &c. in any other Court; and that if the Ecclesiastical Judge shall give Sentence, no Prohibition or Appeal depending, and the party condemned do not obey the Sentence, that then such Judges may excommunicate the party, and if he wilfully stand excommunicated by the space of forty days next after publication thereof in the Parish Church of the place or Parish, where the party excommunicated is dwelling or most abiding, then the Judge Ecclesiastical may certifie the King in Chancery, and require Process of Excom. capiend.

*Excommuni-
caio capiend
given.*

This Clause extends to all manner of Tythes, Offerings, &c. but this gives no double damages for them, as the former Cause doth for Predial Tythes.

There is another Clause in this Act, that gives ground likewise for many Prohibitions, which is to this effect,

That the aforesaid Clause shall not extend to give any Judge Ecclesiastical Jurisdiction to hold plea of any matter, cause or thing repugnant to, or against the effect, intent or meaning of the Stat. of Westm. 2. c. 5. the Stat. of Articuli Cleri, circumspecte Agatis, Sylvæ cæduæ, the Treatise de Regia Prohibitione St. 1 E. 3. c. 10. or any of them, or to hold plea in any matter, wherein the Kings Court ought to have Jurisdiction, any thing therein, &c.

Note, that by these three Statutes before mentioned the Jurisdiction of Tythes is confirmed and restrained to the Ecclesiastical Courts.

That by the Stat. of 27 H. 8. Process for contempt is given before Sentence.

*Observations
upon all the
Statutes.*

By that of 32 H. 8. Process for contempt is given after Sentence definitive: but observe the different penning.

X 4

And

And by this last Statute a Writ of *Excommunicato capiendo* is given, if the party continue obstinate by the space of forty days, after an Excommunication published against him: so that a man would think here were as good remedies provided for the recovery of Tythes in the Ecclesiastical Court as could be imagined; but the interruptions that are frequently given by Prohibitions, as shall be shewed hereafter in due place, very much frustrate the effect of the proceedings in those Courts.

2 Inst. 490.

Noy 81.

Hetley 27.133.

Latch.210.

And note, that a *Modus decimandi* is properly to be sued for in the Ecclesiastical Courts: but if the Prescription be denied, it shall be tried in a Prohibition.

And so having said so much concerning the Ecclesiastical Jurisdiction for the determining the right of Tythes, and relief against subtraction of Tythes, I shall in the next place shew, in what Courts, in what Cases, and in what manner they are determinable in the Temporal Courts.

Selden 422.

In what Cases
the Temporal
Courts have,
and may de-
termine the
Right of Tythes.

Mr. Selden in his History of Tythes reckons up five manner of ways, whereby the right of Tythes may be determined in the Temporal Courts. 1. In Prohibitions, whereby the Spiritual Courts are forbidden to hold Plea, where matters happen which are only triable at the Kings Court, or where those Courts proceed against any Statute or the Common Law, &c. 2. By Writs of Right of Advowson; whereunto may be annexed the Writ of *Indicavit*. 3. By *Scire facias*. 4. By Process Mandatory to command the payment of Tythes. 5. By Suits and Actions upon the before-mentioned Statute of 27 H.8. 32 H.8. and of 2 E. 6. to which
may

may be added the Trials at Common Law by Actions of Trespafs, Affize, &c. And of these in order.

And first of Prohibitions, which are frequently obtained out of the Courts at *Westminster*, Courts of great Sessions in *Wales*, and the County *Palatines*, &c. upon these grounds following.

First, upon a *Modus Decimandi*, where the Defendant in the Spiritual Court suggests, that he and all those whose Estate he hath in the Lands, &c. in which, &c. have time out of mind paid so much yearly in mony, or given some other recompence in satisfaction of all the Tythes arising upon the Lands, or of all the Tythe Hay or Corn, &c. this manner of Tithing being by Prescription, which is only and properly triable at Common Law, if pleaded in the Spiritual Court or not pleaded, or allowed or not allowed as a good Plea, there is a ground of a Prohibition; and what Prescriptions and *Modus decimandi* are in this case approved of by the Common Law, I must refer the Reader to the proper Chapter before.

2. If the Bounds of a Parish come in dispute, whether the place where the Tythes arise be in this or that Parish, this is a matter triable by Jury, and therefore upon a suggestion of this matter a Prohibition will be granted.

3. If Lands be pretended to be discharged of Tythes by the Statute of 31 H. 8. or any other Statute, a Prohibition lies, because it properly belongs to the Judges of the Common Law to expound all Statutes, &c. so if the suggestion be grounded upon the Stat. of 2 E. 6. for barren grounds, &c.

4. If

In what cases Prohibitions use to be granted.

Hob. 286.
42. 247.
2 Inst. 6. 10.
Co. Entr. 459.
d. 460. b.
Co. 2. 44.
Dyer 74. p. 49.
Modus decimandi.
Cap. 6. antea.
Bounds of the Parish. Noy 147
Co. 7. 44. b.
Roll 2. 291.
l. 1, &c.
5 H. 5. 10.
Cro. El. 228.
Monastery lands discharged of Tythes.
Co. Ent. 450. C.
453. d. Porter
vers. Rochester.
M. 6 Jac. C. B.
Rol. 2. 307. v. 13.

*Suits for things
not Tithable.*

4. If one sues in the Spiritual Courts for the Tythes of things not Tithable by the Common Law, for which see *cap.* 12. before, or for the Tythes of great Woods above twenty years growth, it is a ground for a Prohibition.

Littl. Rep. 13.

No Tythes shall be paid of Hades and Balks in the common Fields, but shall be priviledged by the Corn.

*Roll 2. 286. f. 4.
For matters de-
terminable at
Common Law.
38 E. 3. 5.*

5. If a Suit be brought in the Spiritual Court for the taking and carrying away of Tythes, after the Tythes are set forth and divided from the nine parts by the Parishioner, unless the Suit be between two Ecclesiastical peesons in their proper rights, a Prohibition lies, because 'tis matter triable at Common Law.

*Cro. El. 228.
642.*

*Roll. 2. 302. q.
19. 23, 24. v. 16.
For irregular
proceedings of
the Spiritual
Courts.*

6. If the Spiritual Court will not admit a Legal defence, as a Release, an Accord with satisfaction, an Award, &c. or if the Spiritual Judge refuse to admit the Defendant to traverse the Plaintiffs Title, that he is not Parson, Vicar, &c. a Prohibition will be granted; but if the Defendant in the Spiritual Court alledge such matter against the Plaintiff there, which is properly triable in that Court, as Simony, &c. in such case no Prohibition will be granted.

Cro. El. 666.

*Roll 2. 300. q.
6, 8, 9. 301. q.
9. 14, 15.
More 909.*

Hetley 87.

*Disallow proof
by one witness.*

7. If the Spiritual Court shall disallow the proof of the setting forth of the Tythes by one witness, Prohibitions have been granted. *Contra Co. 12. 65. Ideo quære.*

There are many more cases, wherein Prohibitions have been granted, but these are the most frequent, and may serve for a taste. And indeed Prohibitions are granted in all cases, where they exceed their Jurisdiction.

By the Statute of 2 E. 6. it is enacted, that ^{2 E. 6. c. 13.} no Prohibition shall be granted in matters of Tythes in any of the Kings Courts, unless the party that requires the same bring and deliver to some of the Court, where he prays such Prohibition, a true Copy of the Libel subscribed by the hand of the party, and the Suggestion underwritten, and that if he do not prove that Suggestion by two honest substantial witnesses in the same Court within six Months after the Prohibition granted and awarded, then the party delayed shall have a Consultation without delay, and double costs to be assessed by the Court where the Consultation is so granted, to be recovered in an Action of Debt, &c. wherein no Essoin, &c. shall be allowed.

must produce a Copy of the Libel.

Must prove the Suggestion within six Months.

This Clause of this Staute seems to give the Parson, Vicar, &c. a double remedy where the Suggestion is not proved within six Months, that is a Consultation, and secondly, double Costs. But in both these they are in some measure frustrated in their expectations: for as to the first, after such Consultation a new Prohibition may be obtained; and besides, there are several cases wherein the party cannot, or needs not prove his Suggestion, notwithstanding this Statute, as where the Suggestion is in the negative, which regularly cannot be proved: Secondly, if the Suggestion be grounded upon any matter of Law, as in case the Suit be for things not Tithable, great Wood, things *feræ naturæ*, &c. this appearing in the Libel, a Prohibition lies, and there needs no proof of the Suggestion.

Observations upon this Clause.
Hoskins verf.
Stroade.
T. 5 Car. ro.
988. B. R.
Cockeram
verf. Davyes.
Hil. 22 Jac.
Poph. 159.
Jones 231.
Cro. Car. 308.
2 Inst. 662.

2 Inst. 662.

Cobbe verſ.

Hunt. 5 Jac.B.R.

If a ſuggeſtion contain two matters, and the one ought to be proved within 6 Months, and the other here, though the party fail in proving that part that ought within this Law to have been proved, yet no Conſultation ſhall in this caſe be granted.

Noy 28.

A ſleight proof will ſerve in this caſe, as to ſay they have known it ſo, or that common ſame is ſo.

Noy 30, 44.

And if the Suggeſtion be proved before a Judge within the fix months, though not recorded till after, it ſuffices.

Littl.Rep. 185.

If a Man make an inſufficient proof of his Suggeſtion in a Prohibition, it may be ſupplied at any time during the fix Months within the Statute.

To the ſecond here is double coſts to be awarded for want of proving the Suggeſtion, and no Execution given, but an Action of debt to recover it; which is but a bad remedy in this caſe, when the party ſhall only recover the coſts, and have no coſts allowed him in the ſecond Suit.

Noy 81.

If a man have a Prohibition, and do not prove the Suggeſtion within the fix months, and the Defendant takes iſſue upon it which is found againſt him, in this caſe the Defendant ſhall have no coſts.

So upon the whole matter here's a plausible cauſe in an Act of Parliament, and little benefit by it.

*In what caſe**Prohibitions**are Peremptory**in themſelves.*

It is to be obſerved that ſome Prohibitions are in themſelves peremptory, as where there is a Suit in the Spiritual Court for things not Tithable, and appearing ſo in the Libel, in which caſes a Conſultation ſhall never be granted:

granted: and so it is, if the Suit be for carrying away Tythes after they are set forth, unless it be between Clergy-men in their own rights: and so it is where the matter is determinable at Common Law, and the same appearing in the Libel.

But where a *Modus decimandi*, a custom of ^{Where ex post facto.} not Tithing, a priviledge within the Statute of 31 H. 8. for Abbey-lands, and in such other cases, where the Suggestion is grounded upon matter of fact, which is doubtful to the Court, those Prohibitions are not peremptory till the matter of fact be tried and found true by Verdict.

And note, that the Reversioner may have a More 919. Prohibition upon a Suit against his Tenant.

But it is a question whether two that are sued severally in the Spiritual Court may be upon the same *Modus* joyned in a Prohibition.

The manner of proceeding in the obtaining, Hetley 147. prosecuting and defending of Prohibitions is in this manner:

The party that is sued in the Spiritual ^{How to prosecute and defend Prohibitions.} Court, and desires a Prohibition, moves the Court, and for the most part makes his Suggestion *ore tenus* at Bar: if the Suggestion be such upon which a Prohibition cannot be denied, the Court usually gives rule, that the party shall at a certain day come to shew cause why a Prohibition should not be granted, and that in the interim proceedings in the Spiritual Court should be stayed: upon serving this Rule in due time, and oath made of it, if the Plaintiff in the Spiritual Court do not appear at the day, and shew good cause to the contrary, the Prohibition is awarded, and the rule made

made peremptory; but if the Court be doubtful, whether the matter be sufficient to ground a Prohibition or no, then, or at the Prayer of the Defendant the Court will order the Plaintiff to draw up his Suggestion into form, and then the Court will consider of the matter, or the Defendant may demur to it, and the matter argued by learned Counsel, and then the Court as they see cause, will either award the Prohibition, or discharge the Rule. But if the matter suggested be a good ground for a Prohibition, but is in it self false or doubtful, the Defendant in the Prohibition may demand a Declaration of the Plaintiffs Attorney, which is grounded upon a supposed Attachment for not obeying the Prohibition; to which the Defendant may plead as Counsel shall advise him, and Traverse, and put in issue the matter of the said Suggestion, or such other matter as Counsel shall advise, which is to be tried by a Jury of the Country; if it pass with the Plaintiff, then is the Prohibition become peremptory; but if the Verdict pass for the Defendant regularly a Consultation is awarded, that is, a Writ directed to the Judge of the Spiritual Court; authorizing him to proceed notwithstanding the Prohibition.

Littl. Rep. 367. If a man be sued in the Spiritual Court for the Tythes of Wood, Herbage, &c. and a Prohibition granted because the Wood was burnt in the house, or the Cattel bred for the Plow or Payl, the Defendant may plead that the Wood or Cattel were sold, and traverse the Suggestion.

Now

Now by a Statute made in the 50 E. 3. it is enacted, That where a Consultation is once duly granted upon a Prohibition made to the Judge of Holy Church, that the same Judge may proceed in the Cause by virtue of the same Consultation, notwithstanding any other Prohibition thereupon to be delivered; provided always that the matter in the Libel of the said Cause be not ingrossed, enlarged, or otherwise changed.

St. 50 E. 3. c. 4.
Where a Prohibition may be had after Consultation.

But this Statute has been several times held to extend to such Causes only where Consultations are judicially granted upon examination of the Cause, and not where they pass of course, as for want of proof of a Suggestion, or upon Nonsuit for want of prosecution, or where the first was granted for want of a Copy of the Libel, or such like.

Jones 231.
Cro. Car. 208.
Poph. 159, &c.
More 917.

Sometimes the Court grants a Consultation *sub modo*, as where the matter of the Libel is in the disjunctive, and as to one part the Court has Jurisdiction, and to the other not, there the Court may grant a Consultation as to that part that the Spiritual Court has Jurisdiction of, and let the Prohibition stand as to the other.

Co. 5. 68. 2.
Co. 12. Rep. 44.
Consultations
sub modo.

Or a Consultation may be granted, so that the Spiritual Court allow such plea, of such proof.

Sommers vers.
Sir R. Bulkley,
T. 32 El. B.R.
Poph. 58.

Note that the six Months for the proof of the Suggestion is according to the Kalendar, and not twenty eight days to the Month.

Hob. 179.
How the six
Months to prove
a Suggestion is
to be accounted.

And note in the cases before put the Prohibition shall be general, and the Consultation special, *quoad*, &c.

Co. 5. 68. 2.

And

Where no Consultation shall be granted upon a Verdict for the Defendant.
Hob. 300.
Dyer 171.
P. 5, 6.

And it is taken for a Rule in Sir Henry Hobarts Reports, that if a Prohibition be faulty, yet the Defendant shall never have a Consultation, if it appear to the Court that the Suit in the Ecclesiastical Court was not well grounded.

And therefore where one sued for the Tythe Corn of sixty Acres of Land, and the Defendant suggested it was barren Ground, and paid no Tythe, and pray'd and had a Prohibition, and the Jury found that thirty Acres of it were so, and that the other thirty were barren, but had paid Tythe, Wool, and Lamb, and a Consultation denied because it appeared the Plaintiff had no cause to sue for Tythe Corn.

Noy 28.

So if one lay a *Modus* for the whole Town and prove it for himself only, no Consultation shall be granted.

More 91.
Austen vers.
Pigot. Cro. El.
736.

So in a Prohibition it was suggested, that the Parson had twenty Acres of Land, and ten Acres of Wood in discharge of all Tythes, and the proof was that he had twenty Acres of Land only, and a Consultation denied, because it appeared he had no cause of suit.

Prohibition after Sentence.
Hob. 97.
Noy 70.
Winch. 8.
Cro. El. 595.
Hob. 67.

Regularly a Prohibition ought not to be granted after Sentence, unless it appear the Sentence were obtained in the vacation, or by surprise, so that the party had not time to pray it sooner, or upon matter arising after the Sentence, and the granting or not granting rests much in the discretion of the Court.

After Consultation.

And so sometimes upon new matter arising after a Consultation a Prohibition may be granted, notwithstanding the aforesaid Statute of 50 E. 3. as where the Spiritual Court after Consultation proceeds to try matter determinable only

only at Law; or if after a Consultation the Spiritual Court will make an unjust Decree as to award treble damages: and so in all cases if the Spiritual Judge will proceed illegally, and against the Common Law, after Consultation a new Prohibition may thereupon be obtained, but not upon any matter alledged in the Libel.

Hob. 286.

Hughes 245.

Hil. 11 Jac. C. B.

Baldum vers.

Geery.

Prohibitions of themselves are excellent things, where they are used upon just, legal, and true grounds; and have often avoided the Usurpations of the Popes and Spiritual Courts: but by the Corruption of these latter times they are grown very grievous to the Clergy, being too oft granted upon feigned and untrue Suggestions, which it is impossible the Judges should foresee without the Spirit of Prophecy. And I think I may presume to say, that where one was granted before Queen *Elizabeth's* time, there have been a hundred granted in this last Age; and they are a very great delay and charge to the Clergy; and it were well, in my poor Judgment, if the Reverend Judges would think of some way to restrain them, or to make them pay well for their delay by making the Plaintiff enter into Recognizance to pay such costs, as the Court out of which they issue, should award, in case they should not prove their Suggestion in convenient time, or some such other course as they in their great wisdom shall think just and meet.

The vertue and vices of Prohibitions.

And so having done with the first manner of determining the right of Tythes at the Common Law, I shall proceed to the second, which is by Writ of Right of Advowson, to which likewise belongs the Writ of *Indicavit*,

Y

which

which in it self is no other but a meer Prohibition to the Ecclesiastical Judge, and first of the *Indicavit*.

*Indicavit at
Common Law.*

There have been some opinions that the Writ of *Indicavit* is grounded upon the Statute of *Circumspecte Agatis* and *Articuli Cleri*, cap. 2. But it is very clear this Writ lay at Common Law; and it appears in our Books that it was the opinion of some learned Judges that it lay in all cases where the right of Patronage might come in dispute, and of this opinion Sir Edward Coke seems to be.

38 H. 6. 20. a.
per Moile.
4 E. 3. 27. b.
per Markham.
2 Inst. 364.
*Lay for any
Tythes.*
Bracon l. 5.
c. 4. 402. b.
*For a sixth
part.*

And *Bracon* a Learned Judge who wrote in the time of H. 3. hath the very Writ in his Book, which was long before the Statutes above-mentioned; and he saith that this Writ lies, *si contentio fuerit inter Rectores de aliquibus decimis; quæ æstimari possunt usque ad quartam, quintam vel sextam partem advocacy. Et ultra quam partem non extenditur prohibitio, prout sibi videtur.*

*Articuli Cleri
c. 2.*

But whatsoever the Common Law was, it is now settled by the Statute of *Circumspecte Agatis*, and *Articuli Cleri*, cap. 2. That unless at least the Tythes in demand be of the fourth part of the value of the Church, this Writ lieth not: The Statute of *Articuli Cleri*, cap. 2. is, *si sit contentio de jure decimarum originem habens de jure Patronatus, & earundem decimarum quantitas ascendat ad quartam partem bonorum Ecclesiæ, locum habeat Regia prohibitio*, that is to say a Writ of *Indicavit*.

2 Inst. 491.
*Where the Indi-
cavit lies.*

And this Writ lies as hath been said where one Parson demands Tythes against another Parson to the fourth part of the value of the Church or more, which comes into their Churches

Churches by several Patrons, for if the Incumbents come in both by one Patron the right of the Advowson cannot come in question, and by consequence this Writ lies not.

Suppose there be a Parson with a Vicarage endowed, whereof the Parson is Patron; and a Suit be for Tythes belonging to the Parson, to the value of a fourth part of the Parsonage but not to the fourth part of the Parsonage and Vicarage: It should seem in this case though the Vicarage were derived out of the Parsonage, and may again be re-united to that, nevertheless by reason of the several Patrons an *Indicavit* will lye in this Case.

And it is to be observed that this Writ F.N.B. 45.b.c. 12 E. 4. 13. doth not lie before Libel, nor after definitive Sentence, for the party that prays this Writ When.; must shew a Copy of the Libel in the Court of Chancery before he can have it.

And though the Law be restrained at this day to a fourth part of the value of the Church, where before it was at large. Yet the form of the Writ remains, and if the thing in demand be under the fourth part of the value, it must be shewed in pleading by the other side. 2 Inst. 364. The form of this Writ not altered by the Statutes.

And this Writ lies as well for Offerings, as F.N.B. 45.b. Lyes of Offerings. for Tythes: when such Writ is sued and served, and the proceeding in the Spiritual Court stoppt, then the Plaintiff there is to sue his Writ of Right of Advowson of such a portion of Tythes as the case requires, and this is given by the Statute of *Westm. 2. cap. 5.* in these Westm. 2. c. 5. words, *Et cum per breve de Indicavit impeditur Rector alicujus Ecclesie ad petendas decimas*

in vicina parochia, habeat patronus Rectori sic impedito breve ad petendam advocationem decimarum petitarum: but this must be intended where the Patron has the Fee-simple of the Advowson. And the *Indicavit* is to be brought in the name of the Patron and his Clerk against the other Incumbent, that sues in the Ecclesiastical Court and his Patron; but the Writ of Right of Advowson is to be sued by the one Patron against the other, and the Patron demandant shall alledge Explees taken by his Incumbent of great and small Tythes.

By whom.

F.N.B.45.b.

But where the same Person is Patron and Incumbent.

in solem.

12 E.4.13.b.

F.N.B.30.b.

The relief of Tenant in Tail, Purveyances, &c.

2 Inst.364.

The Proceeding remitted.

Regist. 36A.

33.b.

But if the Patron against whom the *Indicavit* is sued, be but Tenant in Tail, Tenant for life or years, then he cannot maintain a Writ of Right, but must demand and appear to a Declaration upon an Attachment, and plead his Title, which must be proceeded in, as in other Prohibitions; and when the Title of the Patronage is determined at Common Law, then the cause must be remitted to the Ecclesiastical Court, where Sentence must be given according as the Law has determined the Right, and this appears by the Form of the *Indicavit*, which is special, *Vobis præcipimus ne placitum illud teneatis, donec discussum fuerit in Curia nostra ad quem illorum pertineat ejusdem Ecclesiæ advocatio.*

F.N.B.30.c.

And there is a note in the Register, that this Writ lies of a Vicarage, Prebend, & *aliis similibus* as well as of a Rectory: and the Form of the Writ is thus: *Præcipe A. quod reddat B. advocationem decimarum quartæ partis vel medietatis Ecclesiæ, &c.*

But these Writs as well as other real Actions, are grown obsolete and seldom put in practice, and

and therefore thus much shall suffice of the nature and proceeding in them.

The third manner of proceeding for the determining the Right of Tythes at Common Law was by *Scire facias*, which was grounded either upon Letters Patents, Fines, or other Judicial Records, of which Mr. *Selden* instances several Precedents; but this manner of Trial being taken away by the Statute of 18 E. 3. c. 7. I shall say no more of it.

Scire facias.
18 E. 3. c. 7.

Seldens Hist.
decim. 439, &c.
Co. Inst. 2. 640.
2 Inst. 640, &c.
Writs Mandatory.

The fourth sort of determining the Right of Tythes at Common Law, mentioned by Mr. *Selden*, is Writs Mandatory, commanding the payment thereof, whereof he gives some few Instances, but these having never been frequent, and for long time discontinued and grown out of use, I will not trouble the Reader with them, but refer the curious Reader to Mr. *Seldens* History of Tythes, and proceed to the fifth manner of determining the right of Tythes at the Common Law, which is grounded upon the late Statutes.

Selden 444, &c.

For the Statute of 27 H. 8. there hath been sufficient said already; for that of 32 H. 8. that concerns the Temporal Jurisdiction, I shall leave it till the last, and proceed to shew what Authority is given to the Temporal Courts by the Statute of 2 E. 6. ca. 13. being the first Law that ever gave the Temporal Courts Jurisdiction for the Parson against the Parishioners for subtraction of Tythes, in which there is a Clause to this effect.

2 E. 6. c. 13.

And it is enacted by that Statute after it has confirmed the former Statutes of 27 H. 8. c. 20. and 32 H. 8. c. 7. That every of the Kings Subjects should from thenceforth truly and justly

Treble value.

without fraud or guile set out, yield and pay all manner of their predial Tythes in their proper kinds, as they arise and happen in such manner and form as hath been of Right yielded and paid within forty years next before, &c. or of Right or Custom ought to have been paid, and that no person thenceforth should take or carry away such or like Tythes, which had been yielded or paid within the said forty years, or of right ought to have been paid in the place or places Tithable of the same, before he hath justly divided or set forth for the Tythes thereof, the tenth part of the same, or otherwise agreed for the same Tythes with the Parson, &c. under the pain of the forfeiture of the treble value of the Tythes so taken and carried away.

2 Inst. 650.

This Clause being compared with the former Clause, almost penned in the same words for the double value, would make a man at a stand what the meaning of the Parliament was, and it was forty years (when almost all that were at the making of this Act were dead) before it was found out, that an Action of Debt lay upon this Clause at Common Law for the treble damages: To wit, *Pasch. 29 Eliz.* In the Exchequer in an Information by the Queens Attorney against one *Wood* for the treble value, as forfeited to the Queen. In which Case it was resolved, that an Action of Debt lay at the Common Law for the treble damage, for not setting forth of Tythes; for wheresoever an Act of Parliament gives a forfeiture against him, that doth dispossess, &c. the Owner of his property, as here he doth of his Tythes, there the forfeiture is given to the Party grieved or
dis-

disposseſſed. Since which reſolution Actions of Debt have been frequently brought in all the Courts of *Westminster*, by Parſons, Vicars, Proprietors, Owners and Farmers of Tythes, as well Lay as Spiritual upon this Statute, but being ſo long before it was found out, that an Action lay at Common Law upon this Statute, the Plaintiffs in the recital of the Statute alledged it to be made the fourth of *February*, 2 E. 6. whereas in truth the Parliament begun the 1 of E. 6. and was held by Prorogation the fourth of *February*, 2 E. 6. And this being diſcovered by an Action between *Oliver and Colier*, P. 6 *Jac. B. R.* brought upon this Statute, wherein the Statute was miſrecited as aforeſaid, and exception taken to it in arreſt of Judgment, the Court upon good adviſement 1 Brownl. 100. over-ruled the exception by reaſon of the mul- Yelvert. 126. titude of Preſidents, and affirmed the Rule, Dyer 171. p. 6. that *multitudo errantium parit errori Patrocinium*. Stile 122.

Now conſidering that this is become a very frequent Action in uſe, I conceive it will not be improper to the preſent occaſion to communicate to the Reader what I have obſerved and learned in this kind of Actions, not only concerning the Forms of Declarations, Pleadings, Verdicts and Judgments, but likewise what evidence is neceſſary upon the general Iſſues of *non culpa.* and *nil debet*, for the Plaintiff and Defendant: And in the firſt Caſe conſider in what Caſes, and by whom, and againſt whom this Action may be brought.

* If two be Joynt-Tenants, and they enter 122.
and occupy joyntly, the Action muſt be brought By whom, and
againſt them joyntly, but if one only enter againſt whom,
and this Statute.

and occupy, the Action must be brought against him, that only occupies alone.

Syderf. 88. 181.

Nota, that the Action lies by Executors, but not against Executors.

But if there be two Tenants in Common, and one of them sets out his Tythe, and the other carries it all away, there the Action shall be brought against him, that carries it all away alone.

Noy 3.

If the Parson have two parts of the Tythe and the Vicar a third part, and one man Farms all, he may sue for all in one Action.

Noy 136.

1 Brown 86.

Yelv. 63.

Cro. Jac. 88.

More 912.

If the Husband and Wife in the right of the Wife be intitled to Tythes, they shall joyn in this Action, because the damage is to survive: but a Parson and a Vicar cannot joyn, but if they joyn in a Lease to a third person, their Farmer may sue for all in one Action; but in the first Case, I see no reason but that the Husband may bring the Action alone, and so I have known it often done.

The Form of the Declaration.

Bellet vers.

Henworth P.

1657. B.R.

In an Action brought upon this Statute, the Severance was alledged before the sowing, and exception taken after Verdict; but the Exception was disallowed, because the shewing of the sowing was superfluous, and so aided by the Verdict.

Cro. Car. 324.

The taking was alledged after the Plaintiffs term was ended, and yet held good.

More 911.

M. 40 and 41 Eliz. A Judgment was arrested, because the Suit was brought *ad respondendum tam Domino Regi quam parti*; but this Case I very much doubt, for being against a Statute Law it is a contempt fineable, though the Plaintiff have the forfeiture, as upon the Statute of Heu and Cry, &c. and I take the

Case

Case *inter Lurvered and Owen*, M. 4 Jac. C. B. Hetley 121.
for the better Law, where it was held good.

Upon an Action brought by two upon this Statute, who made their Title by a Lease from a Patentee of the King, and exception was taken, because they did not shew the Patent, but disallowed. 1. Because the Letters Patents did not belong to the Plaintiffs. 2. Because the Plaintiffs did not demand the Tythes themselves, but damages for a tort; another Exception was taken to the Declaration, because the Plaintiff alledged the Defendant did not agree with them, and did not say, or either of them, but held good by Intendment. Cro. El. 170.

And it hath been adjudged, that in this Action, the Plaintiff needs not to shew his Title especially, but it is enough for him to alledge that he is Proprietor, Farmer or Rector, generally without shewing how. 2 Bulst. 65. 228. 183. 1 Brown. 86. Noy. 3. Yelv. 63. Cro. Jac. 68.

And it hath been held good, though the Plaintiff in his Declaration do not express the quantities or loads of the Corn or Hay carried away. 361. 2 Brown. 70, 71.

And so it is, though you do not express in your Declaration, the kinds of the Grain carried away. 2 Inst. 650.

Where a Man alledged, that he was Farmer of all the Tythe-Corn arising, &c. upon sixty Acres of Land in D. and did not alledge which they were in certain, and yet allowed for good. 2. The Plaintiff alledged the Defendants Occupiers, but did not say, whether joyntly or in common, and yet held good. 3. The Plaintiff had alledged no time of the carrying away, but having alledged the time of the severance, and the carrying away, coming in Coke versus Smith, H. 7 Car. 1. ro. 587. B. R. per Latch.

in with a Conjunction Copulative it was held well enough.

Cro.Jac.324.
2 Bulstr. 114.

In an Action brought upon this Statute, the Plaintiff averred in his Declaration, that he was *subditus dicti Domini Regis*, having recited the Statute, and it was held naught, because it must necessarily be intended *E. 6.* and not of the present King.

*Pleas in this
Action.*

Porter versus
Rochester.
Hill.9 Jac.B.R.

In an Action upon this Statute the Defendant pleaded a Recovery in the Ecclesiastical Court; but it was held no good Plea at Common Law, but I conceive it would be a good evidence upon *nil debet* pleaded, otherwise the Parishioner were in an ill Condition.

Wortley vers.
Empringham.
P.42 El.B.R.
Hob.218.
Cro.El.766.
Cro.Jac.361.
More 914.

In this Action *non culpa.* and *nil debet* have been both held good issues, but it is no good Plea to plead, that the Plaintiff sowed the Corn, and sold it to the Defendant, because this matter will not excuse the payment of Tythes.

Now having brought the Cause to issue upon *nil debet* or *non culpa.* we will shew in the next place what will be good and material evidence, as well for the Plaintiff as Defendant.

*What Evidence
is necessary in
this Action, ex
parte quer.*

First, If the Plaintiff be a Parson, Vicar, or other Ecclesiastick, and have not been some considerable time in possession of his Living, in which I have not observed any constant rule amongst the Judges in their practice, but ten years quiet possession for the most part is allowed by the Judges for an evidence of the Plaintiffs Title, unless some material objection be made against it to draw it into question; but if the Plaintiff have been but for some short time in possession, or the possession litigious, then the Judges usually put the Plaintiff

to prove his Institution and Induction, and now he must prove that he was in Episcopal Orders at the time of his Institution, otherwise his Institution is void ; by the late Act of Uniformity he must produce a Certificate under the Hand and Seal of the Bishop, &c. that instituted him, that he subscribed the Declaration mentioned in the Act of Uniformity, and must prove he subscribed the same in the presence of the Bishop, or, &c. and he must prove that within two Months after he was inducted, upon some Sunday or Lords-day during Divine Service, he read the thitty nine Articles of Religion in the Parish Church into which he was inducted, and that he did declare his unfeigned assent and consent to all things therein contained, and he must likewise prove that within two Months after actual possession of his Living he read Morning and Evening Prayer in his Church upon some Lords-day, and openly and publickly before the Congregation declared his assent and consent to the use of all things therein, contained and prescribed in these words, *I A. B. do here declare my unfeigned assent and consent, to all and every thing contained and prescribed in and by the Book intituled the Book of Common Prayer and Administration of the Sacraments, and other Rites and Ceremonies of the Church, according to the use of the Church of England, together with the Psalter or Psalms of David, pointed as they are to be sung or said in Churches, and the form and manner of making, or Ordaining and Consecrating Bishops, Priests and Deacons.*

The

The Parson, Vicar, &c. having thus made himself a Title, must proceed to prove the taking and carrying away the Corn, Hay, &c. and the value; and if need be that the Land lies within the Parish, &c. but this the Judges put them to prove first of all commonly.

But if the Plaintiff be a Farmer or Patentee under the Crown he must prove his Title, but if he have been any considerable time in possession, and the Title not controverted, the Judges seldom put the Plaintiff to shew any more Title but his bare possession and enjoyment, and that others pay him Tythes.

And so having shewed what is necessary the Plaintiff should be prepared to prove, I will proceed to shew what defence the Defendant may make.

Ex parte defendantis.

Brown. I. 34.

2 Inst. 649.

More 915.

The Defendant upon the general issue of Not guilty, &c. may prove that he duly set forth his Tythes, but if he afterwards carried them away it will not serve his turn; so if he sell his Corn privately to another, and after he has sold it privately, cuts and carries it away; the Action lies against the first Owner; the same Law is, where the Owner of the Land privately sells his Corn to another who privately cuts and carries it away.

If there be two Farmers sue and the Defendant pleads *nil debet*, and upon the trial prove an agreement with one of them, this shall bind his Companion.

And the Defendant may prove that another has a better Title to whom he has paid his Tythes, or compounded with him for them.

Or

Or that he may prove that the Parson came in by Simony, or any other matter that makes his Presentation, Institution, or Induction void, or any other defect in not reading the Articles, &c.

Or he may prove that he set forth his Tythes, and a Stranger carried them away, or may give in evidence, a Lease or Grant from the Plaintiff himself, or to any other to whom he can make a good Title, but such Leases and Grants must be in writing unless for one year only, to the Owner of the Land, which hath been held good by way of retainer.

The Jury, if they find for the Plaintiff, are *Verdict.* to find how much of the debt demanded by the Declaration is due to the Plaintiff, which they are to do by trebling the value of the Tythe subtracted, wherein they are usually assisted by the Court.

The Judgment is always given for the debt *Judgment.*

found by the Jury without costs, because this Action is grounded upon a penal Law, where no Action lay at Common Law, neither shall the Defendant have any costs, if the Verdict pass for him: but if the Jury should upon the Trial give cost and damage, the Plaintiff may release them and take his Judgment: *More 915.* But if Judgment be given for the Plaintiff in an Action brought upon this Statute by *Nihil dicit, non sum informatus*, or Demurrer, the Plaintiff shall have Judgment for the whole debt demanded by his Declaration. And if an Action upon this Statute be brought against two or more, and Verdict only pass against one, or part of the Defendants, the Plaintiff shall *Cro. Jac. 361, 362.* have Judgment against those against whom the Verdict passes, though the others be acquitted, *Stiles 317, 318.* *quod nota.* Note

Nota.

Note that this Statute, as to the treble value and double value, extends only to Predial Tythes, and not to Personal, mixt, or other Church duties.

Savill 69.:

The Chancery likewise by *English* Bill holds Plea of Tythes as may be made out by any precedents.

*Jurisdiction of
the Exchequer.*

The Exchequer likewise by *English* Bill holds plea for a single value, for subtraction of all manner of Tythes, Oblations, &c. of which great use hath been made since the late Wars; and there they decree the single value with costs, and the future payment, which is of great advantage to the Plaintiffs, and these Suits are not interrupted with Prohibitions; but these Suits are often very costly too, for if a *Modus decimandi*, or the bounds of the Parish come in question, and the proof not very clear, they are frequently sent to Trials at Law, which gives delay and increases the charges very much. This Jurisdiction I take it is much fortified since Tenths and First-fruits were annexed to the Crown: but Suits of this nature were rarely brought in this Court before the War, however there are some ancient Books prove that this Court on the Law side has assumed Jurisdiction of Tythes, but the Reporter reports it with a *quod mirum*.

38 Aff.p.20.

44 E.3.43, 44.

Lane 39.:

Where the Kings Copy-holder pleaded a *Modus* it must be tried in the Exchequer, and for this cause a Prohibition was granted.

50 E.3.20.

2 H.4.15.

20 H.6.17.

1 H.6.5.

2 E.4.5.

44 Aff.p.25.

Lastly, It is evident in our Books of Law, that the rights of Tythes were frequently determined at Common Law in Actions of Trespass for taking away of Tythes, unless both parties were Clergy-men; and sometimes Af-

sizes

sizes have been brought at Common Law for ^{38 E. 3. 5.}
 Tythes between Lay-persons. And it is held ^{22 E. 4. 2. 2.}
 in the 25 H. 8. that where the Lord of a Man- ^{25 H. 8. Br. Ju-}
 nor claimed Tythes in consideration of finding ^{isdiction 95.}
 a Chaplain at such a Chappel, and the Parishio-
 ners claimed them likewise upon the same con-
 sideration, that the right of these Tythes being
 between Lay-persons was triable at Common
 Law only.

And at this day if Tythes be once set forth ^{38 E. 3. 5.}
 and divided from the Nine parts by the Owner
 of the Corn; and any person that has not
 right to them carries them away, the Suit for
 this Trespass must be in the Temporal, and not
 in the Spiritual.

And by the Statute of 32 H. 8. it is enacted, ^{Stat. 32 H. 8.}
 that in all cases where any person, &c. which ^{cap. 7.}
 then had, or then after should have any Estate
 of Inheritance, Freehold, &c. in or to any
 Parsonage, Vicarage, Portion, Pension, Tythes,
 Oblations, and which then were, or then after
 should be made Temporal, or admitted to be,
 abide, and go to, or in Temporal hands and
 Lay-uses, and profits by the Law, &c. should
 then after fortune to be disseised, deformed,
 wronged, or otherwise kept or put out from
 their Lawful Inheritance, Estate, Seisin,
 Possession, Occupation, Term, Right or
 Interest, of, in, or to the same, or, &c. by
 any other person, or, &c. claiming or pre-
 tending to have Interest or Title to the same,
 that then, and in every such case, &c. the per-
 son, &c. so disseised, &c. the Heirs, Wives, &c.
 shall and may have their remedy in the Kings
 Temporal Courts, or other Temporal Courts,
 as the Case shall require for the recovering, &c.
 such

such Inheritance, &c. by Writs Original of *Quod ei deforceat, præcipe quod reddat, Assise, &c.* as the Case shall require, &c. So that since this Statute the Case is put out of all doubt, that for such Tythes, &c. which are become Lay-fee, the right, title and possession is become determinable at the Common Law, and all manner of real Actions, Ejectments and other personal Actions are brought there as the Case requires daily.

And now having shewed in how many Courts, and how many ways Tythes may be recovered, it calls to my mind the Fable of the Fox and the Cat, who had but one way to shift for her self when the Hunts-men came, but that one proved better and more secure than all the shifts the Fox had boasted of; for upon the whole matter it were much better for the Reverend Clergy if they had one ready way to recover single damages with their costs of Suits at Common Law, where they might not be interrupted by Prohibitions, and clashing of Jurisdictions, and tost from one Court to another, than all these ways I have mentioned. And it is a wonder to me that there being hardly a Lord in Parliament, nor many of the House of Commons that have not some part of their Estates in Improvements, though they had no kindness to the Church, yet for their own interest and concerns have not to that purpose preferred some Law in Parliament before this time; which might be done in a few lines, by giving an Action of the Case at Common Law for the subtraction of Tythes with costs, or if the Parliament should think fit the smaller sort of Tythes might be determined

in a Summary way by the Justices of Peace with an Appeal to the Judges of Assize; but this I humbly submit, as I do all the rest, to better Judgments.

I have now finished this small Tract, where- *The Conclusion*
by I wish the Reverend Clergy may receive *of the whole.*
as much satisfaction as I desire, or they can expect. And I shall now conclude all with a List of those Monasteries, the Lands of which are only capable to be discharged of the payment of Tythes, by Order, Bull, Prescription, real Composition or otherwise, that every Clergyman may satisfy himself without further enquiry whether such Monastery Lands as shall happen to be in his Parish, &c. may have the benefit of the Statute of 31 H. 8. to be freed of the payment of Tythes: and in the List following I have set down the Times of the foundations of the several Monasteries, that being material to know, for if they were founded since the first year of R. 1. they cannot prescribe in *non decimando*. I have also for the most part set down what Order the Houses were of, that the Reader may satisfy himself whether they were of any of those Orders that were privileged from the payment of Tythes: for the valuations I have followed Mr. *Dugdale*, as being a sure Author, having observed many Errors in that of Mr. *Speed*.

In the perusal of this Catalogue you will find how many Foundations were made of Monasteries in the first Century after the Conquest; and till the Reign of King *John*, that if they had continued at that rate, the greatest part, if not all the Land in *England*, had by this day been

Z

Monastery

Magna Charta.

Monastery Land. But in King *Johns* time they begun to slack, and in the ninth of *H. 3.* the Statute of Mortmain was made, after which you will find but few Religious Houses (as they were called) founded.

The *Cistercian* Order came into *England* about the year of our Lord 1128, and in the ensuing Table, you may see how well they prospered, that in so short a time there should be so many of the greater Abbeys of that Order; but it should seem this Order began sooner. See *Monasticon Angl.* li. i. p. 695.

*Stows Survey
of London,
950.*

The Black Canons regular of *St. Augustine* first came into *England*, as Mr. *Stow* says, in the Year 1108. and were first placed in *Trinity Church* within *Algate, London*. But I rather think he is mistaken in the time, for I find some Monasteries of that Order before that time: However the ensuing Catalogue will inform you of their increase.

*Endowment of
Vicarages.*

And it is without dispute that the increase of Monasteries, especially those of privileged Orders, tended very much to the prejudice of the Secular Clergy that had the Cure of Souls; for beside the Orders that were privileged, they appropriated all the Churches they could obtain, and how ill they were served a man may in some measure observe that peruses the Statute of 15 *R. 2.* and 4 *H. 4.* for it appears by them that they endowed no Vicarage at all upon the appropriating Churches, or so meanly, that the Vicars could not live upon them, and not at all Hospitality practised. And therefore the Parliament of *England* which has always put a stop to the usurpations and exorbitances of *Rome*, and to prevent the Religious Houses destroying

destroying the Church, in the 15th year of the Reign of King Richard the Second made a ^{15 R.2.cap.16.} Law, *That the Diocesan of the place where any Church was to be appropriated, should take care the Vicarage should be well and sufficiently endowed besides a portion to the Poor.* But this Act not having the effect was desired and ^{Palmer's Rep.} expected, the Bishops of those times being over-^{219.}awed by his Holinesses Mandates, or participating too much of his qualities, a second good Act was made in the 14th year of King H. 4. ^{4 H.4.cap.12.} whereby it was enacted, *That all those Appropriations, that were made since the former Statute without such endowments, were declared to be void. And that no Religious person (that is, Monks and Friars) should be made Vicar in any Church appropriated, or to be appropriated by any means in time to come, and that no Vicarage should be appropriated by these Statutes, and divers other Statutes cited in this work upon several occasions.* It is easie to guess what opinion they had, even in the times of Popery, of these People called Religious Men.

I have now made too long a digression; and will therefore proceed to the Catalogue I promised the Reader.

..

*An Apendix to the Third Chapter of
the Second Book.*

Ca. Sancta Ec-
clesia.

THere was a Canon made by Robert Win-
chelsey Archbishop of Canterbury and his
Clergy in the Year 1305, whereby it was de-
creed, that *Omnes & singuli parochiani integre
& sine diminutione decimas inferius annotatas
Ecclesiis suis persolvant; scilicet, decimam lactis
à primo tempore suæ novationis tam mense
Augusti quam aliis mensibus; de proventibus
etiam boscorum pannagiis Sylvarum & cate-
rarum arborum si vendantur, vivariorum, pis-
catorum, fluminum, stagnorum, arborum, pe-
corum, columbarum, seminum, fructuum, &
bestiarum guarenarum, aucupitii, hortorum,
curtilagiorum, lanæ, lini, vini & grani, turba-
rum, in locis quibus fabricantur & fodiuntur,
cygnorum, caponum, aucarum, & anatum, ovo-
rum, Thenetii agrorum, apum, mellis & ceræ,
melendinorum, venationum, artificiorum, nego-
tiationum, nec non agnorum, vitulorum, pul-
lorum, equorum secundum eorum valorem, &
omnium proventuum rerum aliarum de cætero
satisfaciant competenter Ecclesiis quibus tenen-
tur, nullis expensis ratione præstationis deci-
marum deductis, seu retentis, nisi tantum de præ-
statione decimarum, & negotiationum; Quod
si monitionibus suis parere contempserint, per
suspensionis, excommunicationis, & interdicti
sententias eos ad præstationem decimarum hu-
jusmodi compellant.*

This

This Canon being a Provincial Canon of this Nation, and by consequence in force so far, as it is not crost by the Common Law, Statute Law or Custom of the place. I thought fit to insert, though almost all the particulars therein are spoken to in their proper places, save that I have not met with *decima vivariorum* in any other Canon which the Gloss says, is *loca in quibus pisces pascuntur & impinguuntur*, and sometime it is taken * *pro loco* * *ubi feræ includuntur*, with which Sir Robert Stapletons Journal partly agrees; but what Tythes are to be paid for *Vivaries*, neither the Canon nor Gloss tells us, and I as little can give you an account what Tythes are due for Curtilage. *Thenesii agrorum* Mr. Lindwood tells us, is *Arborum crescentium circa agros pro clausura eorum*, which by the Common Law of England are to pay no Tythe; for the rest I refer to the proper Chapters.

Verbo *Vivariorum*.

* Sir Henry Spelman Gloss verbo *Vivarium*.

Here follows a Catalogue of the several Monasteries, that upon the general Survey taken in the 26th Year of H. 8. were returned to be of the Annual value of 200 *l.* per ann. and upwards within *England* and *Wales*, and by consequence dissolved by the Statute of 31 H. 8. and by that means are capable of being discharged of the payment of Tythes; with the date of their Foundations, as near as I can compute, with what Orders they were of: In which observe, that *A.* stands for *Abbey*, *P.* for *Priory*, *Ben.* for *Benedictins*, *Cist.* for *Cistercians*, *Præm.* for *Præmonstratenses*, *Car.* for *Carthusians*, *C.S.A.* for *Canons of St. Austin*, *F.* for *Founded*, *T.* for *Tempore*; and in the valuations I have rejected all *ob.* and *q.*

	<i>Berks.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
R <i>Eading</i> Ben. F. T. H. 1.	1938	14	3	
<i>Busheham</i> A. C. S. A. F. 13 E. 3.	0285	11	0	
<i>Abington</i> A. Ben. F. 720.	1876	10	9	
	<i>Bedford.</i>			
<i>Newnham</i> P. C. S. A. T. H. 1.	0293	5	11	
<i>Elmestow</i> A. Ben. F. T. W. Conquest.	0284	12	11	
<i>Wardon</i> A. Cist. F. 4. Steph. 1138.	0389	16	6	
<i>Chicksand</i> P. White C. Gibertines F. T.				
W. Ruf.	0212	3	5	
<i>Dunstable</i> A. C. S. A. F. T. H. 1.	0344	13	3	
<i>Woburn</i> A. Cist. F. T. Johannis Regis	0391	18	2	
	<i>Bucks.</i>			
<i>Ashrugge</i> Coll. C. S. A. F. T. E. 1.	0416	16	4	
<i>Noteley</i> A. C. S. A. F. T. H. 1. 1112.	0437	6	8	
<i>Missenden</i> A. Ben. F. 1293.	0261	14	6	
	<i>Cantabr.</i>			
<i>Thorney</i> A. Ben. F. 972.	0411	12	11	
<i>Barnwel</i> P. C. S. A. F. T. H. 1. 1092.	0256	11	10	
	<i>Cestr.</i>			
<i>S. Werburge</i> A. Ben. F. 1035.	1003	5	11	
<i>Combermeve</i> A. Cist. F. 1134.	0225	9	7	
	<i>Cornub.</i>			
<i>Bodnim</i> P. C. S. A. F. 936.	0270	0	11	
<i>Launceston</i> A. C. S. A. T. W. Conquest.	0354	0	11	
	<i>St. Ger.</i>			

The Catalogue of Monasteries.

	l.	s.	d.
<i>St. Germans</i> A.C.S.A.F.T.Ethelstani Regis. 0243	8	0	
<i>Cumbr.</i>			
<i>Carlisle</i> P.C.S.A.F.T.W.Ruf. 0418	3	4	
<i>Holmcoltrum</i> A.Cist.F.1135. 0427	19	3	
<i>Derb.</i>			
<i>Darley</i> A.C.S.A.F.T.H.2. 0258	14	5	
<i>Devon.</i>			
<i>Ford</i> A.Cist.F.1133. 0374	10	6	
<i>Newham</i> A.Cist.F.circa 1246. 0227	7	8	
<i>Dincheswel</i> A.Cist.F.1201. 0294	18	6	
<i>Hertland</i> A.C.S.A.F.T.H.2. 0306	3	2	
<i>Torre</i> A.Præm.F.T.R.1. 0396	0	2	
<i>Buckfast</i> A.Cist.F.T.H.2. 0466	11	11	
<i>Plimpton</i> A.Cist.F.T.E.1. 0241	17	9	
<i>Tarvestock</i> A.Ben.F.961. 0902	5	7	
<i>Exon</i> P.Cluna F.T.H.1. 0502	12	9	
<i>Dorset.</i>			
<i>Abbotsbury</i> Ben.F.circa 1016. 0390	19	2	
<i>Middleton</i> A.Ben.F.per R.Ethelstan 0578	13	11	
<i>Tarrent</i> A.Cist.F.per H.3. 0214	7	9	
<i>Shafton</i> A.Ben.F.941. 1166	8	9	
<i>Cerne</i> A.Ben.F.T.R.Edgari 0515	17	10	
<i>Sherborne</i> A.Ben.F.circa 370. 0682	14	7	
<i>Dunelm.</i>			
<i>St.Cuthbert</i> A.Ben.F.circa 824. 1366	10	9	
<i>Tinmouth</i> P.Ben.F. 0397	10	5	
<i>Essex.</i>			
<i>Berking</i> A.Ben.F.680. 0862	12	5	
<i>Stratford Langthorne</i> A.Cist.F.1135. 0511	16	3	
<i>Waltham</i> A.C.S.A.F. circa 1060. 0600	4	3	
<i>Walden</i> A.Ben.F.1136. 0372	18	1	
<i>St.Oswith</i> A.C.S.A.F.1120. 0677	1	2	
<i>Colchester</i> A.C.S.A.T.H.1. 0523	17	0	
<i>Glouc.</i>			
<i>Bristol</i> A.C.S.A.F.circa T.H.1. 0670	13	11	

The Catalogue of Monasteries.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
<i>Hayles</i> A.Cist.F.1246.	0357	7	8
<i>Winchcomb</i> , A.Ben.F.787.	0759	11	9
<i>Tewesbury</i> A.Ben.F.715.	1598	1	2
<i>Cirencester</i> A.C.S.A.F.T.H.1.	1051	7	1
<i>Kingswood</i> A.Cist.F.1139.	0244	11	3
<i>Gloucester</i> A.Ben.F.680.	1946	5	9
<i>Lanibony</i> P.juxta Glouc.C.S.A.F.1136.	0648	19	11
<i>Hants.</i>			
<i>St. Swithins Winton</i> A.Ben.F.634.	1507	17	2
<i>Hyde</i> Abb.Ben.F. per Regem Elfred.	0865	18	0
<i>Wherwel</i> A.Ben.F. T.Edgari Reg.	0339	8	7
<i>Romsey moniales</i> Ben.F.907.	0393	10	10
<i>Twinham</i> P.C.S.A.F. ante 1042.	0312	7	0
<i>Bello loco</i> A.Cist.F.1204.	0326	13	2
<i>Southwick</i> P.C.S.A.F.T.H.1.	0257	4	4
<i>Tichfield</i> A.Præm.F.T.H.3.	0249	16	1
<i>Hertford.</i>			
<i>St. Albans</i> A.Ben.F.755.	2102	7	1
<i>Hunts.</i>			
<i>St. Neots</i> A.Ben.F. circa T.H.1.	0241	11	4
<i>Ramsay</i> A.Ben.F.969.	1716	12	4
<i>Kanc.</i>			
<i>St. Austins prope Cant.</i> A.Ben.F.605.	1413	4	11
<i>Ledis</i> P.C.S.A.F.1119.	0362	7	7
<i>Feversham</i> A.Clun.F.1147. per R.Steph.	0286	12	6
<i>Boxley</i> A.Cist.F.1144.	0204	4	11
<i>Roffen</i> A.Ben.F.600.	0486	11	5
<i>Malling</i> A.Ben. per Regem Edm.	0218	4	2
<i>Dertford</i> A.C.S.A.F.49 E.3. per ipf.R.	0380	0	0
<i>Lanc.</i>			
<i>Whalley</i> A.Cist.F.1172.	0321	9	1
<i>Leic.</i>			
<i>Leicestr.</i> A.C.S.A.F.1143.	0951	14	5
<i>Croxden</i> A.Præm. circa T.R.1. Reg.	0385	0	10
<i>Launda</i> A.C.S.A.F. T.W.Ruf.	0399	3	3
<i>Lincoln.</i>			

The Catalogue of Monasteries.

Lincoln.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
<i>Lincoln St.Cath.P.</i> Gilbert F.T.H.2.	0202	5	0
<i>Kirkstead A.Cist.F.</i> 1139.	0286	2	7
<i>Revesly A.Cist.F.</i> 1142.	0287	2	4
<i>Thornton A.C.S.A.F.</i> 1139.	0594	17	10
<i>Bardney A.Ben.F.</i> 712.	0366	6	1
<i>Croyland A.Ben.T.Reg.</i> Ethelred 716.	1803	15	10
<i>Spalding A.Ben.F.</i> 1052.	0761	8	11
<i>Sempringham A.Gilb.f.</i> 1148. 14 Steph.	0317	4	1
<i>Epworth moniale Carthus.</i> 10 R.2.fundat.	0237	15	2

London and Midd.

<i>St.John Jerusal.P.F.T.H.</i> 1.1100.	2385	12	8
<i>St.Barthol.Smithfield C.S.A.F.</i> 1102.	0653	15	0
<i>St.Mary Bishopsgate Pr.F.</i> 1187.9 R.1.	0478	6	6
<i>Clerkenwel P.Ben.F.T.Reg.</i> Steph.	0262	19	0
<i>London Minors Ben.T.F.E.</i> 1.	0318	8	5
<i>Westminster A.Ben.F.T.</i> Edgari	3471	0	2
<i>Sion A.C.S.A.F.</i> per Reg.H.5.	1731	8	4
<i>London domus Cart.fundat.</i> T.E.3.Reg.	0642	0	4
<i>S.Clare extra Algate monial.F.</i> 1292.	0418	8	5
<i>St.Mary Charter-house Carth.F.</i> 1371.	0736	2	7
<i>St.Johns Holywell monial.</i> nigr.f. 1318.	0347	1	3
<i>St.Mary East-Smithfield A.Cist.F.</i> 34 E.3.	0602	11	10

Northfol.

<i>Thetford A.Clun.F.</i> 1103.	0312	14	4
<i>Wymundham A.Ben.F.</i> 1139.	0211	16	6
<i>Hulmo A.Ben.F.</i> per Canutum Reg.	0583	17	0
<i>Westdreham A.Præm.F.T.H.</i> 2.	0228	0	0
<i>Walsingham A.C.S.A.F.</i> circa T.Step.R.	0391	11	7
<i>Castle Acre A.Clun.F.</i> 1090.	0306	11	4
<i>West Acre A.Clun.F.T.W.</i> Ruf.	0260	13	7

Northon.

<i>Burgi S.Pet. A.Ben.F.</i> per ro.fere R.Mer.	1721	14	0
<i>Pipewell A.Cist.F.</i> 1143.	0286	11	8
<i>S.Andreas P.Clun.F.</i> 1067.	0263	7	1
<i>Sulby A.Præm.F.T.</i> Steph.Reg.	0258	8	5

Nefts.

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	<i>Nott.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
<i>Lenton</i> P.Clun.fund.T.H.1.		0329	5	10
<i>Thugarton</i> P.C.S.A.F.T.H.1.		0259	9	4
<i>Welbeck</i> A.C.S.A.F.T.Reg.Steph.		0249	6	3
<i>Warsop</i> P.C.S.A.fundat.		0239	10	5
<i>Bella Valla</i> Pri.Carth.F.circa 16 E.3.		0227	8	0
<i>Newstead</i> P.C.S.A.F.T.E.3.		0219	18	8

These two last are under value in Mr.*Dugdale*, but
thus *per Speed*.

Northumbr.

<i>Tinmouth</i> a Cell to St. <i>Albans</i> a Nunnery,	0511	4	1
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Oxon.

<i>Godstow</i> A.Ben.F.T.Steph.Reg.	0274	5	10
<i>Eynesham</i> A.Ben.F.T. Ethelred Reg.	0441	12	2
<i>Osney</i> A.C.S.A.F.T.H.1.	0654	10	2
<i>Thama</i> A.Cist.F.T.H.1. <i>per Speed</i> .	0256	13	7
<i>Oxford</i> P. <i>per Speed</i> fund.ante Conq.	0224	4	8
<i>Dorchester</i> <i>per eundem</i> A.C.S.A.F.635.	0219	12	0

Salop.

<i>Hagmond</i> A.C.S.A.F.1100.	0259	13	7
<i>Lilleshal</i> A.C.S.A.F. <i>per Adelfleda</i> R.Mercia.	0229	3	1
<i>Wigmore</i> A.C.S.A.F.1172. <i>per Speed</i> ,	0267	2	10
<i>Wenlock</i> P.Clun.F.1181. <i>vel antea</i> ,	0401	0	7
<i>Salop</i> A.C.S.A.F.1081. <i>per Speed</i> ,	0515	4	3
<i>Hales Owen</i> A.Præm.fund,T.R.Joh.	0337	15	6

Somer set.

<i>Glassenbury</i> A.Ben.circa 300 F.	3311	7	4
<i>Bruton</i> A.C.S.A.F.T.Conquest.	0439	6	8
<i>Henton</i> P.Carth.F.T.H.3.	0248	19	2
<i>Witham</i> P.Cart.F. <i>per</i> H.2.	0215	15	0
<i>Taunton</i> P.C.S.A.T.H.1.	0286	8	10
<i>Batton</i> A.Ben.F.T.H.3.	0617	2	3
<i>Keynesham</i> A.C.S.A.F.T.H.1.	0419	14	3
<i>Michelney</i> A.Ben.F.740.	0447	4	11
<i>Buckland</i> P.Cist.F.T.E.1.	0223	7	4

Staff.

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	Staff.	l.	s.	d.
<i>De la cres</i> A.Cist.F.1153.		0227	5	0
<i>Burton sup. Trent</i> A.Ben.f.T.Eadredi R.		0267	14	3
<i>Croxden</i> A.Cist.cont.Fundat.				
<i>Suffolk.</i>				
<i>S. Edmundi Bury</i> A.Ben.F.1020.		1559	13	11
<i>Butley</i> A.C.S.A.F.1171.		0318	17	2
<i>Sibeton</i> A.Cist.F.1150.		0250	15	7
<i>Ixworth</i> P.C.S.A.F.T.Conq.		0280	9	5
<i>Surrey.</i>				
<i>Merton</i> P.C.S.A.F.1121.T.H.1.		0957	19	5
<i>Shene</i> P.Carth.F.1414		0777	12	2
<i>Chertsey</i> A.Ben.F.666.		0659	15	8
<i>Newark</i> P.		0258	11	11
<i>S. Maries Overs.</i> A.C.S.A.F.7 H.1.		0624	6	6
<i>Bermundesey</i> A.C.S.A.F.7 H.1.		0474	14	4
<i>Warw.</i>				
<i>Combe</i> A.Cist.F.T.Steph.R.		0311	15	1
<i>Kenelworth</i> A.C.S.A.F.T.H.1.		0538	19	0
<i>Merival</i> A.Cist.F.1148.		0254	1	8
<i>Nuneaton monial</i> Ben.F.T.H.2.		0253	14	5
<i>Wilts.</i>				
<i>Malmesbury</i> A.Ben.F.circa 670.		0823	17	7
<i>Bradenstock</i> P.C.S.A.F.T.Conq.		0212	19	3
<i>Edington</i> P.C.S.A.F.1352.		0442	9	7
<i>Ambresbury</i> A.Ben.F.1177.		0495	15	2
<i>Wilton</i> A.Ben.F.T.Ethelwolpi R.		0601	1	1
<i>Fareley</i> a Cell to <i>Lewes</i> per Speed F.				
1125. Clun.		0217	0	4
<i>Lacock</i> A.C.S.A.F.1232 per Speed,		0203	12	3
<i>Wigorn.</i>				
<i>Malverne</i> A.Ben.F.1083.		0308	1	5
<i>Evesham</i> A.Ben.T.Offæ.		1183	12	9
<i>Pershore</i> A.Cist.F.1138.		0643	4	5
<i>Halesowen</i> A.Præm.F.T.Joh.Reg.		0282	13	4
<i>Brodesty</i> A.Cist.F.1138.		0388	9	10
			Eborum.	

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	<i>Eborum.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
<i>St. Mary Eborum</i> A.Ben.F2 W.Ruf.		1550	7	0
<i>Selby</i> A.Ben.F.T.Conq.		0729	12	10
<i>Kirkstall</i> A.Cist.F.1147.		0329	2	11
<i>De rupe</i> A.Cist.F.1147.		0224	2	5
<i>Monks Burton</i> A.Clun.F.circa 1186.		2039	3	6
<i>Nostell</i> A.C.S.A.F.T.H.1.		0492	18	2
<i>Pomfrait</i> A.Clun.F.T.Conq.		0337	14	8
<i>Gisborne</i> A.C.S.A.F. T.Steph.Reg.		0628	3	4
<i>Whitby</i> A.Ben.F.T.Conq.		0437	2	9
<i>Montegratiæ</i> A.Carth.F.circa 1396.		0323	2	10
<i>Newburge</i> P.C.S.A.F.1145.		3067	8	3
<i>Belland</i> A.Cist.F.1134.		0238	9	4
<i>Kirkham</i> A.C.S.A.F.T.H.1.		0269	5	9
<i>Melsa</i> A.Cist.F.1136.		0299	6	4
<i>Brilington</i> C.S.A.F.T.H.1.		0547	6	11
<i>Walton</i> A.Gilbertines F.T.Steph.Reg.		0360	16	10
<i>Bolton in Craven</i> P.C.S.A.F.T.H.1.		0212	3	4
<i>Rival</i> A.Cist.F.1132.		0278	10	2
<i>Fervall</i> A.Cist.F.T.Steph.Reg.		0234	18	5
<i>Furnes</i> A.Cist.F.1127.		0805	16	5
<i>De Fontibus</i> Cist.F.1132.		0998	6	8
<i>Warter</i> P.C.S.A.F.T.H.1.		0221	3	10
<i>Rithal</i> per Speed		0351	14	6
<i>Old Maulton</i> A.F.T.Steph.R.per Speed		0257	7	0
<i>St. Michael juxta Hull</i> Carth.F.1377.		0231	17	3
<i>Wallia.</i>				
<i>Valle de Sancta Cruce</i> Com.Denbigh, Cist.				
F.T.E.1.		0214	3	5
<i>Strata Florida</i> Cardigansh. Cist.or Clun.				
F.T.Conq.		1226	6	0

Gloria Deo Patri, Deo Filio & Deo Spiritui Sancto. Amen.

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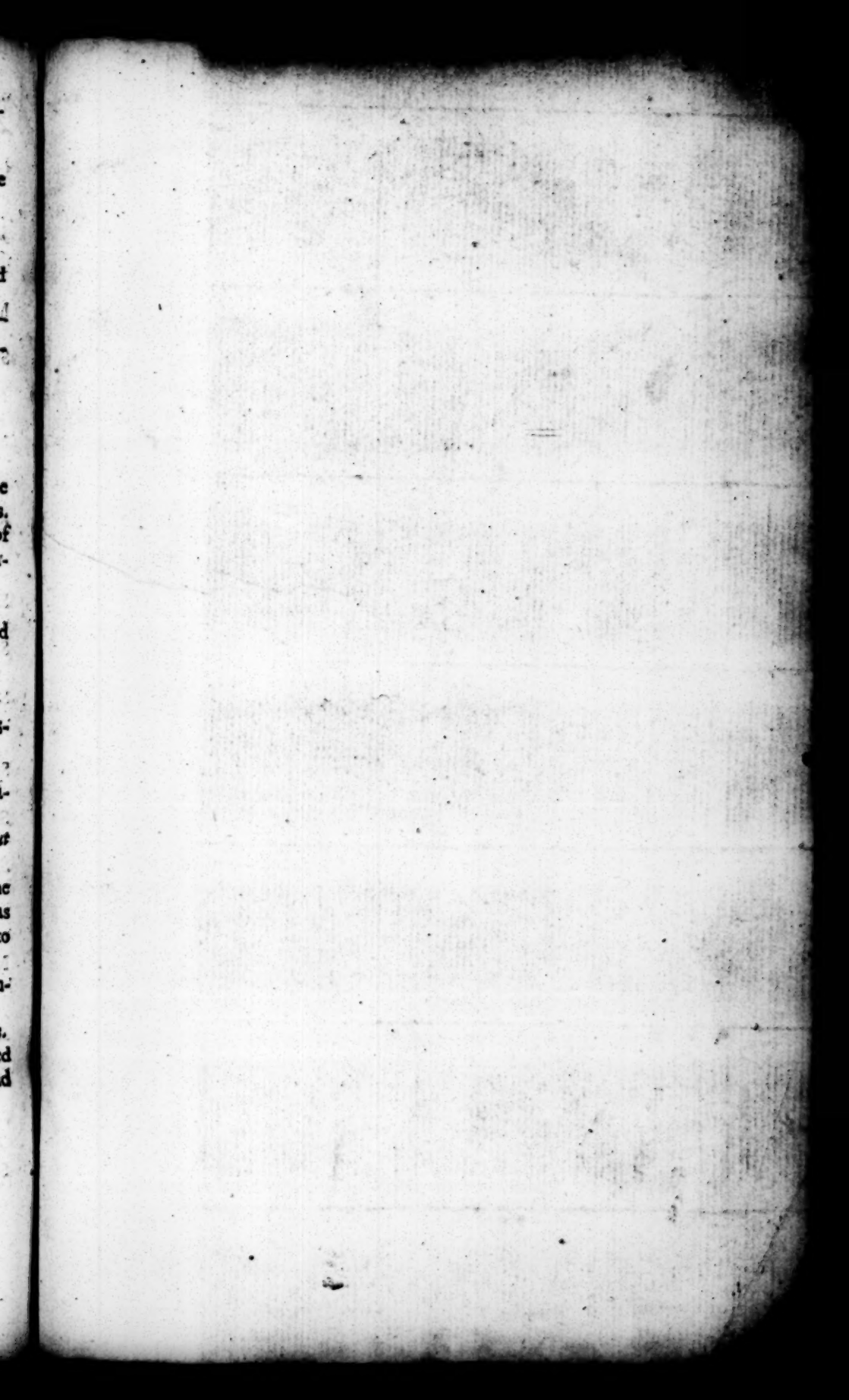
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